Marathon LeTourneau Company, Longview Division *and* International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 745. Cases 16-CA-7723, 16-CA-7885, and 16-CA-7913

June 3, 1981

DECISION AND ORDER

On July 31, 1980, Administrative Law Judge Robert A. Gritta issued the attached Decision in this proceeding. Thereafter, Respondent and the General Counsel filed exceptions and supporting briefs, the Charging Party filed cross-exceptions and a brief, and Respondent filed a brief answering the Charging Party's cross-exceptions.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge[3] and to adopt his recommended Order, except as set forth below.

We agree with the Administrative Law Judge's finding that Respondent violated Section 8(a)(1) of the Act by its disparate application of its no-solicitation rule 13 and its no-distribution rule 14. We do not, however, agree with his finding that Respondent violated Section 8(a)(1) of the Act in the maintenance of the rules. The Administrative Law Judge found that rule 13 prohibits oral solicitation in work areas without delineating a special purpose and that rule 14 prohibits distribution of literature in nonworking areas, also without explicating a special purpose. Respondent excepted to this finding, contending that the General Counsel did not attack the validity of the rules and that the rules themselves are not facially invalid.

We agree with Respondent that, since the facial validity of the rules was not raised in the complaint or put in issue at the hearing, Respondent was denied the opportunity fully to litigate the issue of the rules' validity and to present evidence justifying them, if necessary. Accordingly, we will not adopt this finding of the Administrative Law Judge.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Marathon LeTourneau Company, Longview Division, Longview, Texas, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(c):

"(c) Discriminatorily enforcing its no-solicitation rule 13."

2. Substitute the following for paragraph 1(d):

"(d) Discriminatorily enforcing its no-distribution rule 14."

3. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT interrogate employees concerning union membership, activities, or sympathies of our employees.

WE WILL NOT threaten employees with discharge for engaging in union activities.

WE WILL NOT restrain our employees in the wearing of union insignia.

WE WILL NOT discriminatorily enforce rules 13 and 14 or any rule concerning oral solicitation or initialing, signing, distributing, or posting of literature.

WE WILL NOT discharge, layoff, or otherwise discriminate against any employee in order to discourage membership in, or support

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] In his Decision the Administrative Law Judge states that an attendance chart shows that six employees—Temple, Swaner, Jackson, Bradford, McLain, and Holiday—were guilty of "grossly excessive" absences (in Respondent's terms) but were subjected to minimal or no discipline. It appears that the Administrative Law Judge meant Howell rather than Holiday, whose attendance record is excellent, since Howell did exceed the rule of three absences in November 1977.

[3] The Administrative Law Judge rejected Resp. Exh. 114 on the grounds that the document was not properly authenticated. Respondent excepts and requests that the record be reopened to enable it to adduce testimony concerning Exh. 114. We find Respondent's exceptions without merit. Exh. 114 purports to be a summary of information extracted from Respondent's business records, but it is not itself a document prepared in the ordinary course of business and therefore fails to qualify under the business record exception to the hearsay rule. See Federal Rules of Evidence, §803(6). Respondent failed to proffer as a witness the person who prepared Exh. 114 and does not now offer to show unavailability of that witness at the time of the hearing. Accordingly, inasmuch as the document was not properly authenticated, and since it was offered to prove its contents, it was inadmissible. Federal Rules of Evidence, §901. We deny the request to reopen the record.

of, Local Union 745, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in Section 7 of the National Labor Relations Act.

WE WILL offer to Howard Young, Ulysses Wagnon, Roger Doss, Richard East, and Richard Wade immediate and full reinstatement to their former positions, without prejudice to their seniority or other rights and privileges, and WE WILL make them whole for any loss of earnings or benefits which they may have suffered by reason of our discrimination against them, with interest thereon as provided by the National Labor Relations Board.

WE WILL make whole James Dorough for any loss of earnings or benefits which he may have suffered by reason of our discrimination against him, with interest thereon as provided by the National Labor Relations Board.

MARATHON LETOURNEAU COMPANY, LONGVIEW DIVISION

DECISION

STATEMENT OF THE CASE

ROBERT A. GRITTA, Administrative Law Judge: This case was heard on October 23–27, December 4–8, December 13–15, 1978, and February 12–14, 1979, in Longview, Texas, based on charges filed by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 745 (herein the Union), on January 31, May 15, and May 25, 1978, with amendments and a second consolidated amended complaint issued by the Regional Director for Region 16 of the National Labor Relations Board on August 30, 1978.[1] The complaint alleged that the Marathon LeTourneau Company, Longview Division (herein Respondent), violated Section 8(a)(1) and (3) of the Act by coercive interrogations, restraint, threats, and discriminatory suspensions, discharges, denials of pay and overtime. Respondent's timely answer denied the commission of any unfair labor practices.

All parties hereto were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence, and to argue orally. Briefs were submitted by the General Counsel and Respondent. Both briefs were duly considered.[2]

Upon the entire record in this case and from my observation of the witnesses and their demeanor on the witness stand, and upon substantive, reliable evidence considered along with the consistency and inherent probability of testimony, I make the following:

FINDINGS

I. JURISDICTION AND STATUS OF LABOR ORGANIZATION—PRELIMINARY CONCLUSIONS OF LAW

The complaint alleges, Respondent admits, and I find that Marathon LeTourneau Company, Longview Division, is a Delaware corporation engaged in the manufacturing of bomb casings and heavy construction equipment in Longview, Texas. Jurisdiction is not in issue. Respondent, in the past 12 months in the course and conduct of its business operations, purchased and received at its Longview, Texas, facility, goods and materials valued in excess of $50,000 directly from points located outside the State of Texas. I conclude and find that Marathon LeTourneau Company, Longview Division, is an employer engaged in commerce and in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The complaint alleges, Respondent admits, and I conclude and find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. BUSINESS OF RESPONDENT

Respondent is an international corporation with offices in Houston, Texas. Since 1945 Respondent has operated a division in Longview, Texas, the situs of the alleged violations. The Longview Division manufactures heavy equipment used in mining, earth moving, and material handling industries. In addition, the division manufactures and repairs industrial sized electric generators and motors. An attendant steel mill produces the steel used in both the manufacture and repair processes.

The Longview Division is housed in some 20 buildings and employs in excess of 1,200 persons. The plantsite consists of approximately 2,000 acres with an excess of 20 gates for egress and ingress. An industrial relations department in conjunction with the personnel department administers and maintains all policies and procedures of the corporation. These policies and procedures directly concerning the rank-and-file employees are embodied in a booklet, "Employee Policy Guide" and the Company's posted "rules and regulations." Each is presented to new employees upon hiring. In addition to the usual personnel forms required for each employee Respondent utilizes employee information records (EIR) to document infractions of regulations and counseling by supervisors attendant to the infractions. All supervisors are responsible for enforcing the company rules and regulations and those policies requiring specified conduct from the rank-and-file employees.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A portion of the General Counsel's case consists of establishing the union activity of specific employees and

[1] All dates herein are in 1978 unless otherwise specified.

[2] Among the case citations in the General Counsel's brief were several citations to administrative law judges' decisions. I have neither considered nor reviewed those decisions because until the Board rules on them there is no precedent value.

Respondent's knowledge of such activity. There is testimony in the record evincing an organizational drive by the Union with the support and aid of several employees. However, some inconsistencies are present as well. I have, based upon the testimony I credit, concluded that the first union meeting was held November 17, 1977, with an additional meeting convening on January 29, 1978. Several employees, beginning in November 1977, handbilled employees at various plant gates before and after shifts on two or three occasions during the workweek. Additionally, the campaign paraphernalia such as buttons, stickers, and logos was introduced January 1, 1978. The certainty of additional activity is confused by contradictory testimony and/or lack of plausibility. Although apparently available, neither objective evidence nor testimony from the union representative is in the record.

I have further relied on admissions from Respondent for my above conclusions.

The findings below are based upon the testimony of witnesses I credit and where necessary to their understanding I have indicated the witness or testimony I do not credit.

A. *Interrogation*

1. Admitted Supervisor Bolton

Wagnon testified that he attended the first union meeting held on November 17, 1977. In addition to attendance at the meeting he wore union buttons on his cap and jacket and handbilled employees between shifts beginning in November 1977. Wagnon stated that the day following his attendance at the union meeting he was in the plant riding the scooter and gathering parts when Bolton, foreman of equipment assembly, asked if he had attended the union meeting. Wagnon acknowledged that he had attended and Bolton replied that he thought Wagnon had better sense than to attend a union meeting. The conversation ended and Wagnon continued chasing parts. Bolton testified that he saw Wagnon chasing parts in his (Bolton's) department every day and he speaks to Wagnon every day. Bolton denied any conversation with Wagnon about the union meeting or any knowledge of Wagnon's union activity prior to December 21, 1977. The date supplied by Bolton is based upon his vacation during the month of December 1977. Bolton stated that he saw Wagnon wearing a union button in February but does not know when he started wearing it. Bolton further stated that he was aware of union talk around the plant and planning for union meetings by the employees in November 1977. He did not hear any union talk in his department but did hear employees talking union when he visited other departments in the plant. Bolton testified that he was familiar with the do's and don'ts for supervisors during union campaigns both before and after the supervisors' meeting in January 1978. The main point he recalled was not to discuss union activities with hourly employees. Bolton stated that if employees asked him about the Union he changed the subject. He denied speaking to any employee about union activity since he learned of the union activity in the plant.

2. Alleged leadmen

a. *Chipman*

Wagnon testified that the same day he discussed the union meeting with Bolton he was asked by Chipman, the leadman in his department, if he (Wagnon) had attended the union meeting. Wagnon told Chipman that he had attended the meeting and was a union organizer. That was the end of the conversation.

Chipman testified that he was a foreman 5 years ago but was replaced by Burgess and has been a warehouseman since. He functions as the shipping clerk, being the most senior employee in the warehouse with 18-1/2 years service. Chipman punches a timeclock, is hourly paid, and receives the same benefits as other hourly employees. He does not attend supervisory meetings nor fill in for Burgess during times of absence or vacation. Rash, the assistant foreman, is in charge in Burgess' absence except occasionally for overtime work on Saturday when neither Rash nor Burgess is present. Although there are no leadmen in the department Chipman will act as leadmen occasionally during Saturday overtime. Chipman physically works at the same tasks as the other warehousemen with the added duty of executing the paper work to move the parts for shipping or transfer. He performs this paperwork in the foreman's office on the foreman's desk. Chipman was invited to attend the union meeting by a fellow employee but declined. He denies that he asked any employee, especially Wagnon, if they had attended a union meeting in November 1977. He did recall, however, telling one employee who asked him about the meeting that he (Chipman) had been elected secretary/treasurer.

Doss testified that Chipman was like a leadman on Saturdays in Burgess' absence. He made sure the work was done. Doss did not know what Chipman did each day because Chipman worked in the back rather than side by side with Doss.

b. *Turner*

Beall testified that Turner on November 23, 1977, asked him if he was going to vote for the Union. The questioning took place in the department at the work stations. Beall replied, "Yes sir, if I get a card." That was the end of the conversation. Beall stated that on November 30, 1977, after finishing lunch, he was sitting at a table in the oven department and signing his union card. Turner was standing next to him, watching him sign but did not say anything. Beall acknowledged that his affidavit contained the following: "Turner is not a supervisor. No supervisor ever said anything to me about the Union. I did not pass out any union cards. I have never been told that Stanley [Turner] had any authority over me at all. I have never been told that I had to do what he said or that he was any kind of supervisor. No one ever said that Stanley [Turner] was a leadman." Beall testified that it was a usual thing for Turner to ask him to go help in the oven and buff, paint, or clean. Whenever one of the regular oven employees was absent, Beall usually filled in by helping the other oven employees. Turner some-

times did work in the oven as well as on the benches like other employees.

Turner testified that he is a leadman and setup man and has been for about a year. In his 27 years with the Company he has performed all the work tasks related to the manufacture of electric motors. Turner is the most experienced employee in the department. Although he gives employees the work assignments individually, who gets what is decided by the work classification, e.g., the employees who wind motors get the motor winding assignments. The work orders to Turner originate from Foreman Impson, Superintendent Fox, or Foreman Whitwell. Turner stated he did not have the authority to hire, fire, suspend, discipline, grant overtime, or to recommend discipline. In the specific case where an employee refuses to do an assigned job, Turner can only report such refusal to the foreman. Turner was instructed by Supervisor Fox that in any situation when Fox was absent and Turner needed help in the department, Turner was to seek the aid of one of the department foremen close by. Turner denied any knowledge that Beall had signed a union card or that Beall was for the Union. Turner further denied asking Beall if he would vote union.

Fox testified that Turner did not have any privileges other than what all employees have. Turner was the most senior and most experienced and helped all employees in the department to do their job. If any employee did their job incorrectly then Turner would show them how to correct it. Fox expected Turner to see that the work was done right, as assigned or required by production. Turner leads approximately 13 employees in his department.

Analysis and Conclusions

The record evidence shows that Wagnon and other employees had engaged in union talk in the plant in November 1977. A portion of the talk was limited to organizing union meetings for employees to attend. One such meeting was organized for November 17, 1977. Foreman Bolton was aware of the planned meeting having overheard employees outside his department discussing the plan. Wagnon, of course, was not under Bolton's supervision and admittedly was talkative throughout the plant. Wagnon impressed me as a credible witness straining to recall the events as they occurred. Bolton's denials on the other hand were terse "no's" punctuated by testimony supporting a reasonable and normal curiosity of man. Bolton's admissions of the employees' union activity and premeeting knowledge of the meeting in conjunction with his prideful avowal that no union talk took place in his department leads me to conclude that he had more than a silent interest in the employees and their activity. Bolton's only recall of the supervisors' meeting relative to the union campaign was not to discuss union activities with employees. He founded his denials upon his familiarity with a supervisor's role in such a campaign. The supervisory meeting, however, was convened several months after he first learned of the employees' union activity and the date of the employees' first union meeting. Bolton's denials are not supported by the theme of his testimony taken as a whole and I therefore discredit his denials. Accordingly, I find that Bolton interrogated Wagnon on the subject of the union meeting held the night before.

With regard to the alleged interrogation by Chipman and Turner an additional issue is presented. The General Counsel alleged in the complaint that Chipman and Turner were leadmen and supervisors within the Act. Respondent denied both the classifications and the statutory conclusion. The resolution of the supervisory issue in the negative would in turn resolve the alleged 8(a)(1) violation of interrogation, however, the General Counsel's proffered testimony would not be fully considered. I, therefore, conclude and find that Chipman did ask Wagnon if he attended the union meeting. I do so because I credit Wagnon's testimony on the point and discredit Chipman's denial of the interrogation. Chipman was invited by several employees to attend the same meeting but declined. In addition he was solicited to join the Union by his fellow employees. Their union activity was no secret from him anymore than the expected date of the subject meeting. Chipman's denials on the stand were responsive to leading questions from counsel and have no support from the bulk of his testimony.[3] Chipman's background, as a foreman and a confidant of his fellow employees, causes me to discredit his denials and conclude that Wagnon's version of the conversation is more truthful.

Beall's testimony of his limited union activity was not impressive to me. His demeanor was such that he appeared intent on establishing a certain role in the campaign and known to Turner. Beall may have signed a union card but I do not believe he signed it in front of Turner in the oven, nor do I believe that Turner questioned him about voting in an election 4 days after the first union meeting. I credit Turner's denial of knowledge of Beall's union sympathies and conclude and find that Turner did not question Beall about voting at any time.

Whether Respondent is to be charged with a violation via Chipman's interrogation of Wagnon hinges on the status of Chipman. If Chipman is a supervisor his knowledge of union activity of rank-and-file employees is imputed to Respondent. Likewise any violative conduct engaged in by a statutory supervisor becomes the conduct of Respondent through the agency of his supervisor. The record does not contain any evidence of supervisory capacity of Chipman or Turner. The General Counsel's witnesses, themselves, support only a lead status of both Turner and Chipman. It is clear that neither has authority to responsibly direct employees in their respective departments nor does either possess any powers enumerated in the statute. I find the lack of authority to discipline employees who fail to follow the orders relayed by Turner instructive of his status as something less than supervisory. In such instances he can only report the incident to his foreman. Albeit the General Counsel has proven the lead status of Turner and Chipman as alleged in the complaint he has failed to sustain his burden to show them to be statutory supervisors and/or agents of

[3] Particularly that portion that shows Chipman engaged in conversation with employees about the meetings.

Respondent within the meaning of Section 2(11) or (13) of the Act. Accordingly, I shall dismiss the allegations pertaining to Turner and Chipman.

B. *Restraint*

1. Admitted Supervisor Arp

Young stated that he handed out handbills, signed up employees on union applications, wore union insignia on his person, and attended at least one union meeting on November 17, 1977. Shortly after the meeting he began handbilling or distributing union applications at the north gate of the plant accompanied by Joe Daniels. Young testified, "I was handing out—I was signing up union applications." A discussion or conversation with Mr. Arp took place. "He pulled up in front of the car, and he asked what we was doing. And I told him we were signing up applications. He just told us to get off of the lot. He just asked Joe, was—I don't remember the exact words. But he asked him if he was going home, you know. And Joe said, 'In a few minutes.'" Arp said, "that we had better get off of the lot with that union stuff." Young stated that when he responded to Arp he did not use the word "union" nor did he show Arp what paper he had in his hand. Young testified, "He asked to see, but I wouldn't show it to him. He told us to get off the lot." Young stated that the Union was not discussed with Arp.

Daniels stated that he and Young were passing out union cards and getting the employees to sign them if they would at that time. While they were so engaged Foreman Arp came up to them. Arp asked Daniels what he was doing and Daniels told him he was passing out union cards. Arp then asked Daniels if he was going home and Daniels replied he was when he finished. Arp said nothing more, got in his car and drove off. Arp did not tell Daniels or Young that they had to leave the parking lot. Arp did not tell either of them that they had to stop what they were doing, but, rather Arp let them continue and left the lot.

Arp, the admitted supervisor of machine fabrication, testified that he did not recall any parking lot incident on November 18, 1977. He did recall seeing Joe Daniels and McCarver, two employees, in the steel mill parking lot after shift about November 19, 1977. Arp could not recall ever seeing Young in the parking lot and stated he would not recognize him now if he saw him. The employees he did recall seeing were standing by the hood of an auto. Arp carries a little book in his pocket daily for making personal and business entries that occur each day. He used the book to record instances where employees engaged him in conversations about the Union. He stated he did this upon advice of counsel so he would have something to jog his memory later, if necessary. There were no entries in November or December 1977.

2. Admitted Supervisors Alford, Bratcher, and Bolton

Wade testified that he began his union activity by attending the first union meeting November 17, 1977. He received union cards at that meeting and began distributing them. In late January he received union buttons and stickers and began displaying them on his person. Approximately the same time he distributed union leaflets at the plant gate on one occasion between shifts. Wade also attended the second union meeting on January 29. On February 8, about 1 p.m., he became ill thinking his diabetes was acting up. He asked to be excused from work and was excused by Alford. Wade returned to work on February 10 and upon arriving in the department was confronted by Alford before punching in. Alford said, "Well, you have been on a cheap drunk." Wade replied, "No sir, I don't drink." Wade testified, "Alford thumped my button and said I had better quit worrying about outside interference and other people and get my act together."

Alford denied that he ever thumped any employee's union button and specifically denied that he touched Wade's. He did acknowledge that the first time he saw Wade wear a union button was February 1.

Wagnon stated that on February 4 while he was in the machine shop checking parts, Bratcher saw him wearing a union button. Bratcher then commented to Wagnon about the button. Wagnon testified, "and he told me that I could stay but my button would have to go. So I just turned around and left."

On February 7 Wagnon was issuing parts at the gate in the stores department. Bolton came up to the gate to get some parts. Bolton saw the union button on Wagnon and told Wagnon he should not be wearing the button because the Union had pulled out. Wagnon responded that he had not heard of the Union pulling out. Bolton got his parts and left.

Bratcher stated the he first saw the union button on Wagnon about February 1. On one occasion when Wagnon was in the machine shop office Bratcher reached up and touched the button and looked at it. Bratcher read the legend but did not say anything to Wagnon about the button. Bratcher stated he just walked off.[4] Bratcher further stated that he was told by the Company in a meeting that supervisors were not to harass any employee or run any employee out of their department because the employee was for the Union. He places this company meeting after he first saw Wagnon's button on his person.

Bolton denied making any statement to Wagnon or any employee on February 7 about union buttons being worn by employees. Bolton stated that he was aware of the do's and don'ts of supervisors during a union campaign. He had attended company meetings for this purpose in the past with the most recent being held in January. Bolton did see Wagnon in early 1978 wearing union buttons. He could not place the date other than in February.

Analysis and Conclusions

The evidence of the conversation in the parking lot presents a circumstance where no one witness can be believed totally. Young on direct supports the allegation as framed but on cross denies that the word union was mentioned by anyone and further denies disclosure of

[4] Powell's testimony offered to corroborate Bratcher was too general to identify as relating to the incident in question. I find his testimony of no help in my determination.

any union material. Daniel supports the mention of union in the conversation but states that Arp said nothing about stopping what they were doing or that Arp told them to leave the parking lot. Arp denies that Young was there or that any such conversation took place. He supports this denial with blank pages in his little book wherein he kept notes of employees' union activity upon advice of company counsel. The advice of counsel, however, postdates the alleged occurrence. Assuming, *arguendo*, if the General Counsel's witnesses are credited in the critical areas the allegation is still not supported. There is no testimony that the employees were told to cease distributing union cards in the company parking lot. Accordingly, I find that Respondent did not violate the Act through Supervisor Arp.

Wade impressed me with his demeanor and especially the lack of any animus toward Respondent or Alford in particular. Alford on the other hand was intent on demeaning Wade even with regard to admitted facts or circumstances. Alford's denials in relation to Wade's union buttons were sterile and with little attempt to recall the circumstances. Further his denials were all encompassing of his conduct *vis-a-vis* the employees in his department. I was not impressed with Alford's demeanor or the substance of his testimony. I credit Wade's version of the conversation on the morning of February 10 and conclude that the thumping of Wade's button (for emphasis) in conjunction with the statement of outside interference, other people, and getting the act together constitutes an infringement upon employees' Section 7 rights by restraining employees in the free exercise of those rights. I therefore find that Respondent through Supervisor Alford violated the Act.

Wagnon's version of the February 4 comment by Bratcher was clear, short, and to the point. Wagnon was a good witness and did not mince words. He appeared to be making a genuine effort to recall what was said. Bratcher likewise impressed me with his straightforward manner and unequivocal recall of touching Wagnon's button and reading the legend. Although denying that he said anything to Wagnon about the button he did not deny making some remark to Wagnon. However, even if Wagnon's version is credited, and it is, I do not find that Bratcher crossed the line. The test for 8(a)(1) violations is correctly stated by Respondent in its brief and under the circumstances present here I cannot say that such a nebulous remark reasonably tends to interfere with the free exercise of employees' rights under the Act. I shall, therefore, dismiss the allegation against Bratcher.

The evidence relating to the February 7 remark of Bolton to Wagnon is likewise clear and short. Wagnon credibly recalls the remark made by Bolton in Wagnon's department when Bolton arrives on business. Bolton denies any remark to Wagnon and partially supports this denial with his understanding of the do's and don'ts for supervisors. Bolton's demeanor and substance of his testimony was undoubtedly calculated to place the activity of any employee as outside his department (a fact he apparently was proud of) and therefore outside his interest. I conclude, however, that Bolton did make the remark to Wagnon on February 7 because he was interested in limiting union activity of employees in any department. I have considered Respondent's position as dictated to its supervisors in the management meeting in January and conclude that such edicts are not controlling, in that, in some cases the individual supervisor's convictions will override management's policies. However, I do not find that Bolton's remark was coercive or restrained Wagnon in the exercise of his statutory rights.

C. *No-Solicitation Events*

1. Wagnon stated that on February 1 he was storing parts with a forklift when Burgess came up to him. Wagnon testified, "Burgess approached me and told me that he was warning me, I had been written up for soliciting on Company time, and if I got wrote up one more time he was going to have to let me go. I asked him who had turned me in. He said he couldn't tell me. I also asked him—he didn't tell me when or where it was supposed to take place." Wagnon stated that he had been given antiunion literature by Jackson in the warehouse in front of Burgess' office in Burgess' presence. The antiunion distribution occurred on February 6 during working time.

Burgess admitted knowledge of Wagnon's union activity and that he wrote up Wagnon for soliciting on company time. Although he refused to disclose to Wagnon any details he did testify that an employee reported to him that Wagnon had talked to the employee about the Union. Burgess testified that the employee told him, "Wagnon talked to me about the union. Once after lunch after the work whistle blew and the employee walked back into the restroom and was contacted there. Another time, just outside of—in stores—but outside the building, he was contacted twice on Company time. Wagnon was soliciting or trying to get him to sign a card for the union." Burgess denied seeing any employee distribute antiunion literature in his department especially in front of the office. Burgess did admit that Jackson had something to distribute but he told Jackson that he could not authorize it.

Chipman denied seeing any employee distribute any literature inside the plant, particularly in front of Burgess' office.

Howell stated that he had reported Wagnon's solicitations to Burgess because that was the way to get it stopped. Wagnon followed him into the restroom just after lunch after the whistle had blown to go back to work. Wagnon asked if he wanted a union card. The second time was in the salvage yard. Howell testified, "Well, that is as far as it got. He [Wagnon] started out of the gate, and I said, 'No, I don't want no part of it.'"

2. Dorough stated that in February he posted union handbills on the vending machines in the electric building. He put them up before the shift started and minutes later they were taken down by Foreman Impson. At the time no other material was on the machines. Dorough did see antiunion literature in other departments in the plant. He also saw Impson put up a notice on loyalty to the Company. Dorough complained to Supervisor Whitwell about Impson taking down his union postings. Dorough stated that Whitwell told him since the machines were not company property it was all right to

post the union leaflets. Dorough made two attempts to post prounion leaflets. The first in February and the second in April or May. On each occasion he did so because antiunion literature was posted elsewhere in the plant.

Whitwell acknowledged that some antiunion literature was in the plant. He denied, however, that he told Dorough he could post the prounion literature on the vending machines. Whitwell recalled, when Dorough complained of Impson's removal of the postings, he told Dorough that Impson probably did it because they should not have been posted in the first place.

Impson stated that the vending machines and the adjoining wall was the location in the electric building where company notices were posted. Also employees posted notices of sales. All notices are supposed to be approved before posting and approval was evidenced by Industrial Relations Manager Bellatti's initials. Impson said he took down all notices that were not approved but in the case of the notices for sales he left them up a reasonable length of time. On one occasion he saw a notice posted in the engineering department. The notice was concerned with loyalty to one's Company and if an employee wanted to complain he could quit. Impson posted the loyalty notice on the vending machines in the electric building with the permission of Dan Jones, the plant manager. The notice was not initialed by Jones or anyone else. Within an hour of the posting someone took the notice down. Impson did not know who removed the notice but he speculated it was probably removed because of the absence of approval initials. Impson stated that he took down Dorough's notices because he felt if Dorough could put them up on company time then he (Impson) could take them down on company time. Impson did not, however, see who put the notices on the vending machines each time they appeared.

Analysis and Conclusions

The General Counsel contends that Burgess by reprimanding Wagnon discriminatorily applied Respondent's no-solicitation rule because Wagnon was prohibited from soliciting on company property during his nonworking time in a nonworking area. The General Counsel rests his contention, partially, on testimony relating to distribution of antiunion literature by rank-and-file employees, ostensibly without incident, although occurring in the presence of supervision.

Respondent admits the reprimand to Wagnon for the stated purpose supported by the testimony of the reporting employee. However, Respondent denies the occurrence of antiunion literature distribution or the allowance of any such distribution.

Relative to the allegations involving Foreman Impson, the General Counsel claims that Respondent again discriminatorily applied its no-solicitation rule by disallowing Dorough to post union literature but allowing antiunion literature to be posted in the plant.

Respondent admits to disallowing Dorough to post union literature on the vending machines but denies allowing antiunion postings in the plant. Foreman Impson admittedly removed the union literature from the vending machines in accordance with Respondent's unwritten rule on prior authorization from management for all postings.

The General Counsel has not specified which rule of Respondent's is under attack nor has the General Counsel drawn any distinction between the Wagnon and Dorough incidents.

Respondent, on the other hand, points to the testimony of disparate treatment of Wagnon's oral solicitation and the antiunion literature distribution in Wagnon's department during worktime as an ambivalence in the General Counsel's case. Respondent finalizes its argument by stating that neither Wagnon's nor Dorough's circumstance has anything to do with Respondent's no-solicitation rule, referenced as rule 13. Further Respondent correctly alludes to the absence of any allegation in the complaint challenging the validity of its no-solicitation rule.

Respondent has two rules which appear to jointly control solicitations. They appear in Respondent's written regulations as follows:

> Rule 13. Soliciting in work areas during scheduled work time or so as to interfere with production is prohibited. Solicitations by third persons is prohibited at all times.
>
> Rule 14. Initialing, signing, distributing or posting any literature, posters, handbills, petitions or any other notices during scheduled work time or so as to interfere with production is prohibited.

Albeit the allegations do confuse solicitation and distribution or posting and the evidence likewise confuses the two, a defense founded upon that confusion is lacking arguable substance. A reading of Respondent's rules also produces confusion of solicitation and distribution or posting.

The Board's approach to interpretation of employer rules prohibiting solicitation or distributions has uniformly centered upon the meaning conveyed to employees as to when and where they may engage in solicitation or distribution. Thus, where the employee's statutory rights of self-organization are not invaded by the terms used in the stated rule, an employer enjoys a presumption of validity of the rule. However, the presumption may be rebutted by extrinsic evidence which shows a too restrictive application or enforcement of an otherwise valid rule. Therefore, the validity of any rule may rest upon its application and enforcement by the employer.

Respondent argues that the General Counsel's failure to challenge the validity of its no-solicitation rule as written, precludes any consideration of the rule itself. I disagree. The General Counsel has questioned Respondent's policies of no-solicitation and no-distribution in specific instances. Respondent has defended the implementations of those policies by specific acts and conduct directly related to its rules and regulations as promulgated and enforced by its supervision. Any scrutiny of the enforcement of a rule must necessarily include consideration of the rule itself. If for no other reason than to compare the enforcement of the rule by supervision to the prohibitions against employee conduct conveyed by the terms used in the rule. Further, all rules must be uni-

formly applied to the work force to enjoy validation. I conclude that the substance of the rules as evidenced in the record are subject to my scrutiny as well as the manner and means of enforcement.

Even if rule 13 was not considered for its content, the reprimand to Wagnon would be discriminatory. The record shows Wagnon's first alleged transgression to have taken place in the restroom shortly after the return-to-work whistle blew but before either employee had in fact returned to work. The second transgression took place in the salvage yard but the testimony leaves much doubt as to whether Wagnon actually engaged in a solicitation. Respondent's witness (relied upon for the reprimand given to Wagnon) knew Wagnon was a union protagonist and wanted nothing to do with him. I understand his testimony as anticipating a solicitation by Wagnon and stopping it before it was begun. The report Respondent got from the alleged harassed employee was ambiguous to say the least, however, Wagnon's side of either event was not solicited. I can only infer that Respondent was not concerned with all the facts surrounding the events but rather was intent on disciplining a known union adherent for violation of its rule against solicitation. No evidence was offered to show any interference with production, therefore, the reprimand rests upon soliciting in a work area during scheduled worktime. The reprimand, thusly founded, must fall. One solicitation occurred in a nonwork area and at a time difficult to identify as worktime. The instance of any solicitation the second time is open to question and, therefore, no basis for discipline to Wagnon. Accordingly, I conclude and find that Respondent's reprimand to Wagnon for violation of its no-solicitation rule was discriminatorily motivated and designed to discipline a union adherent for exercising his right under Section 7 of the Act. In so finding I have considered the uncontroverted testimony that solicitations sponsored by factions other than union factions are allowed by Respondent and participated in by supervision and the lack of a complete investigation by supervision before issuance of the reprimand. Respondent has thereby violated Section 8(a)(1) of the Act.

I further conclude that the terms used by Respondent in its rule 13 do not raise a presumption of validity requiring extrinsic evidence to rebut the presumption. See *Essex International, Inc.*, 211 NLRB 749 (1974). Also, the Board has held that solicitation of signatures on union authorization cards are oral solicitations and as such can only be prohibited during actual worktime. Respondent's rule 13 goes too far.[5] Accordingly, in that Respondent's rule 13 prohibits solicitation by employees in *work areas* without designation of special purposes (nor found in the record) such as maintenance of order, discipline, safety, or quality of production, I find the rule too restrictive of oral solicitations and invalid on its face. It follows that any enforcement of the rule, such as reprimands to employees guilty of solicitations would be unlawful, *ab initio*, whether discriminatorily motivated or not, and I so find.

As indicated earlier, Respondent has an additional rule 14, which combines prohibitions against solicitations of signatures and distribution or posting of literature.[6] Although not argued by Respondent as the basis for Impson's conduct in removing the union literature from the vending machines it would appear that the rule would cover the situation. The record does show, undeniably, that Dorough posted union literature on the vending machines and that Impson took that same literature down. Whether Dorough posted the literature during actual worktime is disputed, notwithstanding Impson's appraisal of his rights as foreman to take down on company time what was posted on company time. (An apparent affirmation of rule 14 as it relates to postings.) The factual issue is brought into focus by Impson's statement that he had no knowledge of who posted the material or when it was posted.

The General Counsel contends that Impson's removal of the union literature from one set of vending machines while allowing antiunion literature to remain posted on other sets of vending machines evinces a discriminatory application of Respondent's no-solicitation rule.

Respondent argues that Impson's action does not involve the Company's no-solicitation rule but rather involves Respondent's right to prohibit the posting of prounion literature on its premises. Contrary to Respondent's argument, any exercise of such a broad prohibition would not only require recitation authority but the presence of detailed and specific facts. See *Republic Aviation Corporation* v. *N.L.R.B.*, 324 U.S. 793 (1945); *N.L.R.B.* v. *The Babcock & Wilcox Company*, 351 U.S. 105 (1956); and *N.L.R.B.* v. *United Steelworkers of America, CIO [Nutone, Inc.]*, 357 U.S. 357 (1958). Respondent further argues that this is not a case of the employer denying prounion employees access to a preexisting communication medium provided by the Company for employees' personal use. Respondent states, admittedly, it has not provided bulletin boards for the posting of employee communications. The evidence discloses the contrary of Respondent's arguments and statements of fact. The employees do post personal notices on the vending machines in Dorough's department and Impson leaves them posted for a reasonable time before removing them. Official company notices are posted on the same machines and when the required time has elapsed Impson removes them. Although Respondent claims that any notice must have approval to be posted the evidence shows that only the unapproved union literature was removed by the Company. Impson himself later posted a "Company loyalty notice" which was not approved in accordance with Respondent's policy of postings on the same vending machines. Respondent claims that Impson, an admitted supervisor and agent, had the authority and right to do so. Apparently, without regard to its policies of posting since Impson did not have management approval to post the notice.

Respondent's argument that the notice posted by Impson was protected by Section 8(c) of the Act requires little consideration. It should be abundantly clear

[5] *Stoddard-Quirk Manufacturing Co.*, 138 NLRB 615 (1962).

[6] I base my conclusion that rule 14 is a combination proscription on the use of the words: initialing, signing, and petitions. As those words are normally understood an employee would include his solicitations of union authorization cards within the proscriptions.

that a discriminatory application of an otherwise valid no-solicitation or no-distribution rule seldom requires an unfair labor practice violation finding based upon the substance of any literature in question.

The record also shows that the vending machines are in a nonwork area of Respondent's plant and are frequented by employees at any and all times of the shift. There are no paid breaktimes in Dorough's department. The employees are free to use the vending machines at their leisure, within reason.

I conclude that Respondent's rule 14 governs the distribution and posting of literature by employees in conjunction with the oral rule requiring proper authorization. I base this conclusion upon the testimony of supervisors, Respondent's exhibits, arguments in Respondent's brief, and the record as a whole.

I further conclude that rule 14 must meet the test for no-solicitation rules as well as no-distribution rules. Applying both tests, I find that rule 14 is presumptively valid relative to oral solicitations but invalid on its face relative to distribution of literature. With regard to the distribution of literature the rule is too broad in that it conveys to employees a prohibition against distribution of literature in nonworking areas without any special purpose explicated.[7]

Additionally, I find, in the absence of a factual dispute,[8] that Respondent applied the no-posting portion of the rule discriminatorily by allowing personal notices of employees and campaign literature of the Company to be posted in the nonwork area of the vending machines but disallowed the same privilege to prounion employees for posting of union literature. The record does not contain any evidence of a special purpose requiring rigid or stringent rules against posting. Rather, the record shows the contrary to be the case, at least in some departments of the plant. E.g., the employees could post on company-owned toolboxes so long as the display did not leave the work area.

D. *Threats and Surveillance*

1. Billy Sanders testified that he attended the union meeting of January 29 and received a union button for his shirt. He wore the button approximately three times, once the day after the meeting, but could not recall what other days he wore it. On each occasion that he wore the button on his shirt, he also wore a jacket over his shirt because it was winter time and the carrier line was cold. On February 3 he and his foreman, Wilkerson, were discussing production and the fact that Sanders needed to improve his production. Wilkerson informed Sanders that he would have to produce 100 parts per hour on the spot welder so that the carrier line could produce enough for 25 boxes. Sanders testified that at some point during the conversation he asked Wilkerson why he was coming down on him so hard and Wilkerson responded, "There's the clock, there's the door. You are going to be voting at teamsters." Wilkerson stood there for a while and said, "Are you going to go or stay." Sanders said he would stay and Wilkerson walked off. The conversation took place around the spot welder but no one else was there at this time.

Each member of the six-member carrier production line testified but only Mayo states that she heard the conversation. The other employees stated that the department is too noisy to hear unless you are very close. Mayo testified, "He [Wilkerson] came over and said he wanted us to get out 102 a day and just not—not to worry about the two. Just get out the 100. He asked Billie and me, did we want to put in any overtime to get more boxes out. And we said no, we was going to do 8 hours. So he [Wilkerson] got all up in Billie's face and told him that he could hit the door and hit the clock anytime he wanted to do since he had decided to go teamsters." Mayo stated that Wilkerson just walked off and left Billie standing there. Mayo also places Bob Ewing in the conversation behind Sanders.

Wilkerson denied threatening to discharge Sanders for being a teamster sympathizer and denied any knowledge of Sanders' union activity.

Employees Montgomery, Ewing, Ross, Walker, and Tanner testified that they did not see Sanders wear a union button at work nor did he (Sanders) tell them he was for the Union.

2. Loftis testified that he was interviewed for employment on March 13. Foreman Whitwell took him to his work station and explained what the job would be. While walking down an aisle in the electric building, Whitwell said, "Since James Dorough was pushing for the union, that he probably wouldn't be with the Company much longer." Whitwell also said, "Dorough would probably approach me about the Union." Whitwell did not say anymore about the Union. No one else was around to hear the conversation between Loftis and Whitwell.

Whitwell testified that while touring the building with Loftis at hiring time, he told Loftis, "There is a union. The teamsters are trying to organize the Company and your [sic] going to be working with one of their more active organizers. He [Loftis] said, 'Well, maybe I better not even take the job then.' I said, 'Well, I don't think it will make any difference because [they're] going to have an election before you're here three months and you won't even be eligible to vote.' So he said, 'It'd be all right then.' . . . I told him the Company didn't want a union. Didn't think we needed one." Whitwell denied that he told Loftis that since Dorough was pushing the Union he probably wouldn't be with the Company much longer.

Analysis and Conclusions

The General Counsel alleges that Foreman Wilkerson threatened an employee with discharge if said employee

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[7] *Stoddard-Quirk Manufacturing Co., supra.* Additionally, Burgess testified that employee Noble Jackson sought to distribute some campaign literature and Burgess only reply was that he could not authorize it. Burgess denied knowing the literature was antiunion but I discredit his denial. He could only determine authorization or not if he first knew what the literature contained. Further I find Chipman's denial of any distribution of literature in the plant too broad and all encompassing to be probative of the Jackson incident testified to by Wagnon.

[8] There is no dispute as to what literature was posted and remained posted and what literature was removed from posting by Respondent. Pierce's testimony that he saw Impson remove union literature from the coke machine and leave nonunion literature intact is not controverted.

continued support of the Union. The allegation to be supported must include proof of Sanders' union activity and Wilkerson's knowledge of such union activity at the time the threat was uttered. The evidence relied upon by the General Counsel to support the utterance of a threat occurred in a conversation between Wilkerson and employee Sanders during shift when no one else was around. The conversation admittedly was bottomed on increasing the production quota of the carrier line employees to 100 parts an hour, representing a change from 75 parts an hour. The record shows that similar conversations took place between Wilkerson and line employees on several occasions.

The General Counsel offered Mayo, who sometimes worked on the spot welder with Sanders, to corroborate the alleged threat by Wilkerson. Mayo recalled the conversation and the threat but places it around February 5 or 6, after Sanders returned to the spot welder from the automatic welder and includes the presence of a third employee. It also appears that Mayo's version postdates the time study executed on February 13. (See sec. III,E,1,d, *infra.*)

Employee witnesses for both parties stated that conversations can only be heard during work if people are close to each other and one witness stated you must actually be facing your conversationalist.

I was not impressed by Sanders' demeanor on the stand. He was surly at times and indifferent at other times. Throughout his stint on the stand he appeared dedicated to bolstering his case rather than attempting to recall the events. Albeit I do not discredit all his testimony, I do discredit his testimony on his wearing a union button where it was visible to Wilkerson. If, in fact, he wore a button, it was not seen by his coworkers, including Mayo. It is highly unlikely that Wilkerson could see a union button on Sanders when his coworkers could not. Sanders did not recall any specific instances where anyone saw or could have seen him wearing the union button. I therefore conclude that Wilkerson did not know of Sanders' single union activity on February 3 or any other time. I also discredit Sanders' testimony of the threat to the extent that he stated that Wilkerson made reference to the teamsters. I credit Sanders' recall of the general conversation on production quota and conclude that Sanders did take issue with the increase and Wilkerson then told him if he didn't like the amount expected of him, "there's the clock and there's the door."[9] Otherwise the remainder of the conversation as stated by Sanders makes no sense at all. I further credit Sanders that the conversation took place on February 3 when no one else was around. Mayo correctly recalled one of the several conversations that Wilkerson had with the employees about increasing production but I discredit her testimony on the threat she says she overheard. Her testimony is contrary to Sanders and the other employees on the line. She could not have overheard what Sanders thought to be a conversation between he and Wilkerson only because of the noise in the department. When Wilkerson wanted to talk to the whole line about increasing production he took everyone outside rather than risk them not understanding his message. Also Mayo's demeanor left something to be desired. She was very guarded in her responses and appeared more intent on tailoring her testimony rather than telling it all. Additionally, the record objectively shows one of the production conversations among Wilkerson, Sanders, and Mayo did take place on February 7, the day Sanders returned to the spot welder to work with Mayo. I find that Mayo fabricated the threat testimony in an attempt to help Sanders' case.

Accordingly, I find that Wilkerson did not threaten Sanders with discharge for continuing to support the Union. I also find that Wilkerson did not have knowledge of Sanders' union activity on February 3 or at any other time. I base this finding upon the lack of credible evidence of Sanders' union activity or other evidence from which knowledge could be inferred.

In paragraph 7(j) of the complaint, the General Counsel alleges that one employee was warned that another employee who was active for the Union would be terminated. I have considered the allegation as a threat to the employee receiving the warning. This alleged threat and allegation of an impression of surveillance involve Foreman Whitwell. Employee Loftis was an impressive witness testifying in a clear and decisive manner. I credit his testimony. With Whitwell's admission of what he said to Loftis, the message becomes clear. If you do what Dorough is doing your job will not last. The fact that Loftis was a new employee, there for his first day, makes the threat more impressionable as an infringement of Section 7 rights. Whitwell's version of the conversation shows the initial reservation Loftis had in his mind about staying on the job. Whitwell denied the language of the threat attributed to him but did so unconvincingly. His denial was simply a "No." Further the context of Whitwell's admitted conversation with Loftis shows antiunionism as a policy of the Company and it was initiated by Whitwell with the disclosure Whitwell's denial of the threat, I conclude that Whitwell was purposefully attempting to influence the exercise of Section 7 rights of a newly hired employee. Therefore, I find that Whitwell did threaten Loftis with termination if he engaged in union activity. I do not, however, conclude nor find that Whitwell's disclosure to Loftis of Dorough's union leadership creates an impression of surveillance. The circumstances of this case are unlike the case cited by the General Counsel in his brief.[10] In the instant case the employee identified (Dorough) is well known as a union activist due to his notorious activity in behalf of the Union. The lack of common knowledge of the plant in a new employee does not change the character of that which is common to employees. To state it another way, what Whitwell told Loftis about Dorough's union activity was not something secretive from most but well known to all. Therefore, the source could hardly be surveillance. I view this kind of colloquy in much the same fashion as the Board views questioning known union activists by supervisors during a union campaign. Such questioning is

[9] Mayo credibly testified that from the day she was employed Wilkerson criticized Sanders daily for working too slow and not getting production.

[10] *Redwing Carriers, Inc.*, 224 NLRB 530 (1976).

not, *per se*, coercive interrogation in violation of the Act.[11]

E. *Discrimination*

1. Discharges

a. *Albert Beall*

Beall's discharge is alleged as caused in whole or in part by his union activity which was known to management. The testimony of his union activity and Respondent's knowledge thereof was considered earlier in this decision.[12] Having found Beall's union activity to be of the very weak variety and Respondent not to have knowledge of Beall's activity, as it is, I find it unnecessary to consider the cause for Beall's discharge. The Board is limited to determining whether there was a discriminative motive behind an employee's discharge and not the reasonableness of the employer's reasons for the discharge. In fact, the Board may disagree with the employer's reasons for discharge but absent a finding of discriminatory motivation the discharge stands. See *N.L.R.B.* v. *The Consolidated Diesel Electric Co., Division of Condec Corp.*, 469 F.2d 1016 (4th Cir. 1972). The employer always is permitted to discharge the inefficient and disobedient. *Martel Mills Corporation* v. *N.L.R.B.*, 114 F.2d 624 (4th Cir. 1940). Additionally, the record is void of any evidence (other than Beall's own testimony) from which an illegal motive for Beall's discharge could be inferred. Assuming some reader of the record may be satisfied that Beall engaged in sufficient union activity, he also engaged in conduct warranting discharge and the discharge cannot be held unlawful simply on the basis of some union activity.[13] Beall's version of why he did not go to the oven when asked by Turner is unbelievable. The objective evidence in the record shows different work tasks than that testified to by Beall. Additionally, Beall's appraisals of the time required to complete the single task in progress when Turner told him to go to the oven are too far apart. It appears that even if Beall's greatest time were considered in conjunction with the time of the request that Beall would have had some work in the oven. My determination of the events of that night include crediting Turner's testimony that Beall responded to the request suggesting that the Company hire new men if more are needed in the oven. I also discredit Beall's testimony that he spent the remainder of the night on the same motor, thereby eliminating any time in which to work in the oven as requested by Turner. Beall's demeanor in this instance was no more impressive than before. (See fn. 9.) I conclude that Beall refused to go to the oven as instructed by Turner and when Beall appeared several days later (Beall talked to Fox in Newland's presence, dressed in street clothes, not work clothes) Respondent discharged him for the prior refusal. Accordingly, I find Respondent has not violated the Act in the discharge of Beall.[14]

b. *Howard Young, Ulysses Wagnon, and Roger Doss*

Young, Wagnon, and Doss are classified as warehousemen in the production stores department which is supervised by John Burgess. Approximately 19 warehousemen work in production stores with several assigned to an evening shift. Each warehouseman functions as a parts retriever and parts supplies filler. The department also ships and receives whatever it handles. The usual shift time is 7 a.m. to 3:30 p.m. and each warehouseman has a key to the department which remains locked from the rest of the plant as a security measure. Breaktimes for all warehousemen are paid time but are not scheduled. Employees are free to take a break at their leisure. Employees clock in at the main gate where a bank of four to six timeclocks are located. A work whistle which signifies the start of shift blows at 7 a.m.

Young testified that he attended the first union meeting on November 17, 1977, and thereafter handed out union handbills and solicited union authorization cards for signatures. In addition he wore union buttons on his clothing when they became available. During the course of his employment he was absent and tardy on occasion for sickness, personal business, and to finalize his divorce. He was counseled by Burgess in September and November 1977 about his absences. Burgess told him on each occasion he had too many absences including those which were taken by permission. In addition, when Young was also tardy on occasion, Burgess reminded him that he was supposed to be at his work station when the whistle blew. On January 18 Burgess held a special meeting to discuss the incidence of tardiness and absences and told the employees to shape up because it was having an effect on production. The following 2 days Young was absent due to ice, cold weather effect on his car, and sickness. He called the plant in accord with the rule to report absences but was only able to speak to the shipper in the back of the department. The following day he was not able to reach Burgess or the department by phone so he spoke only to the guard. He reported for work the following Monday and at the end of the weekly safety meeting Burgess asked what his reasons for the absences were. Young said he was sick and Burgess asked if he had seen a doctor. Young told him he had not and Burgess told Young that his services were no longer needed. Burgess told him to report to personnel and Young did so to process his termination.

Wagnon's testimony of his union activity is treated earlier in this decision.[15] Wagnon also testified that each morning when he clocked in he could choose a clock with an earlier time than the others because the clocks were not synchronized with each other. Some employees, on occasion, would do this to show a time earlier than their actual arrival. In spite of such a choice, Wagnon stated that he was late on several occasions. Sometimes on Monday we would be late for the weekly safety meeting as well. He knew when he was late by

[11] *Flight Safety, Inc.*, 197 NLRB 223 (1972).

[12] Sec. III, A, 2, b, *supra*.

[13] *Klate Holt Company*, 161 NLRB 1606 (1966).

[14] Albeit Respondent argued and elicited testimony that all discharges are not final when the supervisor issues a stop card, the influence that Stahl, assistant personnel manager, has on the prior determination of the supervisor in some cases appears minimal, if any influence exists at all. I have therefore treated all discharges related to Stahl as effective upon issuance of the stop card from the supervisor.

[15] Sec. III,A,1; 2,a; B,2; and C,1, *supra*.

the blowing of the whistle. Burgess required the warehousemen to be in the department when the whistle blew. Wagnon did not know what timeclock the whistle was synchronized with. Some employees, including Wagnon, also utilized the nonsynchronized timeclocks to check out at the end of the shift. By choosing the clock with the latest time, each could actually check out several minutes early. In addition to his tardies Wagnon had several absences each month. Wagnon was counseled by Burgess several times in late 1977 about his tardiness and again in January 1978. Each time Burgess warned Wagnon that he could be discharged for continued tardiness. Burgess continued the work station rule for tardy as determined by the whistle after counseling Wagnon. Burgess began keeping a time book on lateness in the early part of 1978 and recorded the names of employees who were late. On February 10 about 10:15 a.m. Burgess told Wagnon he was fired for being late too many times. Burgess instructed Wagnon to go to personnel to get his check and turn his badge in. Wagnon proceeded to personnel as directed.

Doss testified that when he first started his employment in September 1977 Burgess suggested he ride with Wagnon since they both lived in the same town. Doss did talk to Wagnon and rode to work each day with him. In November 1977 Doss attended the first union meeting and the next day signed a union card. In January and February he handbilled union literature at the main gate where the timeclocks were and wore a union button on the outside of his work jacket. On at least one occasion when he wore the union button, Burgess engaged him in conversation and saw the button. During the course of his employment he was absent or late on several occasions. He had been told by Burgess that to be to work on time the store employees had to be in the department when the whistle blew. Doss stated that the timeclocks at the main gate all had different times. The clock by his card rack was as much as 15 minutes different than other clocks at the gate. Most of the time he used the clock by his card rack although the clocks are not designated for any particular department. On January 29 he was late and Burgess counseled him in the department office. Burgess told Doss that he had been late before and should make an effort to get to work on time. Burgess suggested to Doss that the next time he reported late to tell him and explain to him rather than have Burgess find out for himself. About a week later Burgess also counseled Doss on leaving early for lunch. Doss stated that he was late about 20 minutes on February 8 and reported to Burgess that a wreck had occurred on the interstate due to ice on the bridge and that's why he was late. Burgess replied that it was okay. On February 10 while Doss was searching for Burgess to discuss the movement of some parts he saw Wagnon walking down the aisle toward him with Burgess about 15 feet behind. As Wagnon passed he said, "They got me." Burgess walked up to Doss and asked for the department keys and told Doss to fill out his timecard, go to personnel, turn in his badge, and get his check. Burgess said they were letting him go for excessive tardiness. Doss proceeded to personnel as instructed.

Foreman Burgess testified that the company policy has always been that an employee must be in his department at the start of shift. The usual starting time is 7 a.m. Although Burgess never considered it a problem he did have employees who were tardy. He always told employees that they should be in the department when the whistle blew. If he did not see an employee in the department when the whistle blew he considered them late. In some cases Burgess would write up the employee and in others he would not. In the situation where the employee was written up, Burgess stated he would tell the employee he was to be written up and then would actually write up the employee later. There were occasions when Burgess used the writeup as a threat and never actually did it. In any event an employee never saw the writeup itself. In December 1977, his superior, Samuel Moore, production control manager, began requesting more production from the stores department and met with Burgess to implement the increase. The usual production quota of L-800 front-end loaders was four a month but Moore was wanting eight a month. Burgess suggested hiring more employees to offset the absences in his department but Moore was not satisfied that new employees were the answer. Moore told Burgess to get a program started to eliminate the absences and tardies, and new employees would not be needed. Moore said he would be monitoring the program. Burgess began keeping book on employees who were tardy in addition to his usual work hours log on each employee. He continued his rule of using the whistle as a yardstick. If an employee clocked in at 7 a.m. Burgess did not automatically mark him tardy. An employee was only marked tardy if he was not in the department when the whistle blew and Burgess was aware of it. Burgess stated that Moore did not see tardies that way. In addition if Burgess asked a man to come in early, e.g., at 6 a.m., and the man arrived after 6 a.m., he did not mark him tardy because the earlier hour was not routine. Moore did not view the early hour exception as Burgess did.

On January 18 Burgess held a special meeting of his department and told the employees that the absences and tardies needed to improve because the department was faced with a higher production quota. He did not explain the company rule on absences and tardies with regard to what was an excess. Burgess himself did not have any standards to determine what was excessive nor did he know of any rule respecting the number of writeups an employee must receive before discharge or a number of writeups that would dictate discharge. He continued the use of the whistle as the measure for tardy and told employees he would continue to write them up for tardies. Burgess also told the employees that Moore would be checking the employees' progress. Employees Wagnon, Doss, Temple, Swaner, and Bradford had been written up and counseled on several occasions since late 1977.

Howard Young had been written up and counseled by Burgess for absences in September and November 1977. He was present at the January 18 meeting, on Wednesday, and was absent the next 2 days. Burgess stated that Young had called in to report the absences on the second day about 8:30 a.m., but had not called in the first day.

Burgess told Moore that he had decided to discharge Young and Moore agreed. Burgess stated that the discharge was for excessive absences but at the time he did not know the total absences Young had accumulated. He only knew he had been absent. When Young returned on Monday, January 23, Burgess talked to him after the safety meeting. He asked Young why he had been absent. Young said he was sick and Burgess asked if he went to the doctor. Young replied he had not seen a doctor and Burgess then told Young that his services were no longer needed. Burgess told Young to report to personnel. Young's termination report shows the reason for discharge was "excessive absences."

Burgess further testified that on the morning of February 10, Moore called him and told him to terminate Wagnon and Doss for excessive tardiness. Burgess found Wagnon first and told him that he was being discharged for excessive tardiness and to report to personnel. Burgess later found Doss and told him essentially the same thing. Burgess stated that Moore made the decision to discharge in each case. Burgess was the one to implement it by Moore's instructions. Burgess did not know if either discharge was within the Company rule of tardiness but he did know that Moore's rule of when someone was tardy was different from his. Burgess also stated that Wagnon stopped for coffee each morning before starting work no matter what time he clocked in. Burgess denied any knowledge of union activity on the part of Doss and Young but acknowledged union activity by Wagnon as of February 1. Burgess also professed ignorance of the lack of synchronization of the timeclocks at the main gate.

Production Control Manager Moore testified that he was aware of an absence problem in late 1977 in the production stores department because Burgess was consistently asking to hire new people to offset the absences. At this same time the production of the stores department has an annual increase due to end-of-year catchup required to fill customers pending orders. As a result of the absence problems, Moore decided to investigate the incidence in the stores department. In January he accumulated the timecards for all employees in stores for November and December 1977. He charted the absences day by day. As he reviewed the timecards he became aware of a tardiness problem as well. Moore used the punch in time as a yardstick for tardiness. Any employee whose timecard showed a punch-in at 7 a.m., or later, was charted as tardy. Moore stated that the company rule was all employees should be in their department at 7 a.m. so any man not clocking in before 7 a.m. could not be in his department when the shift started. Moore did not know whether or not the timeclocks were synchronized nor did he know of any rule whereby an employee was not tardy if he was in his department when the whistle blew. Moreover, even if he had known that the timeclocks were not synchronized, such knowledge would not have changed his determination based upon his chart of absences and tardiness. Moore admitted that the timeclocks were replaced with a new system in mid-1978. Moore also knew the company had a whistle but he did not consider the whistle in determining tardiness. Moore decided that Burgess was being lax in enforcing the company policies on absences and tardiness, and confronted Burgess about January 17 or 18. He told Burgess to meet with his people and get it straightened out. Moore told Burgess to get his people to work on time or get someone else. Moore stated that he devised the rule of three in January and told Burgess of the rule when he met with him on January 17 or 18. The rule simply stated is: "any employee accumulating a total of three, whether absences or tardies, in any month (twenty working days) would be guilty of grossly excessive absences or tardies or both." Moore did not tell Burgess to inform the employees of the new rule nor did he inform any employees of the new rule. Moore continued charting the employees in January and February as he did in November and December 1977.

As a result of his chart, Moore found three employees to be excessively tardy, Bradford, Wagnon, and Doss. On February 10 he informed Burgess to terminate the three due to their excessive tardiness. Burgess did so in the case of Wagnon and Doss, but in Bradford's case did not do so immediately because Bradford was on the night shift and could not be replaced. Moore did not tell Burgess to terminate Temple or Swaner, two employees who also satisfied Moore's rule of three, but they were disciplined. Swaner was written up for tardiness at some time and Temple was suspended for several days in July for excessive tardiness. Moore stated that Temple was treated differently than Wagnon and Doss because he had 16 years with the Company. As an older employee he was more valuable to the Company. In contrast, Moore stated that Doss had only been with the Company 4-1/2 months.

Moore admitted knowledge of Wagnon's union activity dating from the no-solicitation writeup Wagnon received and stated that Burgess reported to him the very day Wagnon came to work wearing a union button. In addition, Moore acknowledged the union activity among employees in the plant in December 1977. Moore, however, denied knowledge of any union activity on the part of Doss or Young. When asked if he had any knowledge of Young's union activity, Moore responded, "I doubt seriously if Howard Young even knew who I was." Moore added, in response to counsel, that Young could have been terminated for excessive tardiness in addition to excessive absences.

Analysis and Conclusions

The General Counsel presented evidence that Young, Wagnon, and Doss were discharged in circumstances evincing disparate treatment of employees. The record also shows that each was engaged in union activity prior to and at the time of discharge and that Respondent knew, or should have known, of the union activity. Thus, the General Counsel has presented a *prima facie* case of discharge for unlawful reasons. This does not carry the day for the General Counsel however, for Respondent can overcome the *prima facie* case by a preponderance of competent, credible, rebutting evidence.

Respondent has offered such rebutting evidence and argument, but, for the reasons stated below, I find it has not sustained its burden of persuasion.

Respondent, in its brief, cites several circuit court cases to support its argument.[16] In summary, Respondent argues that where an employee has engaged in conduct for which he would have been fired in any event, there is no room for discrimination to play a part. In further support of its argument, Respondent cites *Klate Holt Company*, 161 NLRB 1606 (1966). Suffice it for me to observe that the court in *Frosty* stated, "The inquiry must be made even where the discharged employee has done something that might warrant his discharge, since if it is something that the employer might pass over in another instance the firing of the union employee can be discriminatory." Additionally, as I read the Board's holding in *Klate*, the Board is saying that a discharge cannot be found unlawful by *merely showing that the employee engaged in union activity.* (See sec. III,E,1,a.) Respondent also argues that *Whitfield* stands for the proposition that the supervisor who actually makes the decision to discharge an employee must have direct knowledge of the employee's union activity for a discriminatory motive to be found. In fact, the court in *Whitfield* stated that the Board, after brushing aside denials of knowledge of union activity by higher echelon supervisors, failed to point to direct evidence showing knowledge. I accept Respondent's argument that knowledge of union activity is not to be lightly inferred but I reject the argument that direct evidence of knowledge, corroborated by credible witnesses, is required to show knowledge. It was long ago established that circumstantial evidence may supply the predicate for a finding of knowledge.[17] The Supreme Court held, in part, "The Board was justified in relying on circumstantial evidence of discrimination and was not required to deny relief because there was no direct evidence that the employer knew these men had joined Amalgamated . . . ." Court acceptance of Board reliance upon circumstances surrounding an alleged discriminatory discharge has followed through the years. See, e.g., *Fred Stark, et al.*, 525 F.2d 422, fn. 8 (2d Cir. 1975).

To bring the three discharges into focus, I must reject an additional argument of Respondent and invalidate as not probative of the issue, a portion of Respondent's evidence dealing with the discharges. First, Respondent argued that Wagnon and Doss were discharged for excessive absences and excessive tardinesses as a dual cause. Respondent's exhibits in the record as well as the testimony of Respondent's own witnesses establish conclusively that Wagnon and Doss were discharged solely for excessive tardiness. Secondly, Respondent offered, in defense of Young's discharge, evidence of work habits not related to absences, notwithstanding the sole reason assigned for Young's discharge was excessive absences. My determination will be based upon the assigned reasons for discharge and any consideration of the extraneous material will be to fill in the totality of the circumstances surrounding the discharges.[18]

The evidence in support of the assigned reasons for the discharges of Young, Wagnon, and Doss shows that Respondent had a very general rule on absences and tardiness which was not enforced to any degree until shortly after the union activity began in November 1977. Contrary to Respondent's contentions the Company only considered absence and tardiness as serious offenses after January when the excesses of each were defined by Production Control Manager Moore, as a total of three (but not for publication to employees) and subsequently used as the basis for the ultimate discipline in one department of the plant. Such a rule of excess absences or tardiness was not promulgated throughout the plant nor implemented in other than the central stores department.[19] The published rules do indicate that discharge could result from infractions but the evidence shows the practice under the rules to be one of tolerance rather than discipline. Indeed, the record shows that tolerance was a practice after the rule of three, at least for certain employees other than the discriminatees. Viewing the chart originated by Moore, one sees Temple, Swaner, Jackson, Bradford, McLain, and Holiday as grossly excessive (in Moore's phraseology) but minimal discipline, if any, for the infractions. Respondent admitted that Temple and Swaner were treated differently because of their longevity with the Company and offered testimony to show that Bradford was subsequently discharged albeit the decision to discharge was made contemporaneously with that of Wagnon and Doss. The expressed reason for delay in Bradford's case was that he could not be immediately replaced. The record is silent as to why he could not be replaced. If one speculates that the increased production supplies the "why" then the question becomes "why not" the same for Wagnon and Doss. There is nothing to explain the preferred treatment of Jackson and McLain. Respondent did proffer an exhibit to show that before the discharges and after the discharges, employees throughout the plant were terminated for the same reasons, i.e., excessive absences and excessive tardiness.[20] There is no evidence, however, that the defined rule of excessive absence and tardiness devised by Moore was applied to any of the employees other than Wagnon, Doss, and Young. The record does show that Burgess, who was responsible for Young's discharge, did not know the number of absences Young had when the determination to discharge was made nor did he know whether the company rule was followed in the discharge. It is apparent from Moore's chart that the company rule was not followed for McLain, Jackson, Swaner, and Holiday who had the same or more absences, consecutive or not, as Young. As Moore stated, *Swaner was straightened out now*, apparently without need of discipline. Burgess expressed indignance that Young should miss the two days following his special meeting

[16] *Frosty Morn Meats, Inc.* v. *N.L.R.B.*, 296 F.2d 617 (5th Cir. 1961); *N.L.R.B.* v. *Whitfield Pickle Company*, 374 F.2d 576 (5th Cir. 1967). Albeit not exhaustive, these cases are representative.

[17] *N.L.R.B.* v. *Link-Belt Company*, 311 U.S. 584 (1941).

[18] The record facts relied upon are basically undisputed.

[19] In Foreman Alford's department a man was not tardy if he made up the time and totaled 8 hours for the day. A check of the timecards in central stores department to ascertain the checkout time of employees could lead one to the same conclusion.

[20] Resp. Exh. 114. I rejected the exhibit and upon motion of counsel, I placed the exhibit in the rejected exhibit file. In view of counsel's reference in brief to my ruling I have reconsidered the proffer and reaffirm my ruling.

to impress on employees the need for regular attendance. He failed to explain however his lack of ire for Bradford who missed the following day, Doss who missed the following day, Jackson who missed the day of the meeting and the 2 days following, McLain who missed the second day following, Swaner who missed the 2 days following, and Wagnon who missed the day following. This is the same Jackson who twice was seen distributing antiunion literature by Wagnon and to whom Burgess could not give authorization for distribution of literature. (Compare the discipline in Alford's department exemplified by only a writeup to Richard Wade for missing 2 consecutive days without calling in to report.) I'm constrained to assess no more importance to the day of the meeting and the 2 days following than Burgess or Moore did as shown by the lack of discipline to all negligent employees. The impotency of the meeting is further established by the lack of communication to the employees of the newly established rule of three by which they could be discharged (and were) contrary to the past practice.

The new rule must suffer additional criticism because of the method by which employees were determined to be tardy. Burgess, rather than change his practice of using the whistle to measure tardiness, affirmed to the employees the continuation of the practice of being at their work station when the whistle blows. Moore in charting the employees disregarded the whistle entirely and evaluated tardiness by the clock stamp on each employee's timecard. The uncontroverted testimony of Wagnon and Doss relative to the non-synchronization of the timeclocks at the main gate places a strain on Moore's use of the chart for any purpose and particularly to discharge some employees for the incidence of tardiness it shows. In my view, Moore removed all doubt of the chart when he stated that had he known the clocks were not synchronized, he would have made the same determinations. The record is clear that subsequent to the discharges of Wagnon and Doss the Company installed a new semplex system with a master clock to replace the disputed timeclocks.[21]

I conclude that the reasons assigned by Respondent for the discharges of Wagnon, Doss, and Young are suspect based upon the proven disparity and thereby fail the test as just cause.

There is, however, evidence that the motivating factor for the disputed discharges was the effect that the departmental absences and tardies was having on production. Moore testified that the end-of-year normal was to increase production, to fill by year's end all pending orders. Burgess testified that Moore placed a burden on the department to double production from four loaders to eight loaders per month. Moore's version would have passed by years end 1977 and admittedly Moore did not investigate the punctuality of the department until January. Burgess' version would have continued into 1978 causing considerable consternation for any and all failings of punctuality, particulary in view of Moore's denial of Burgess' repeated request for additional employees on the payroll. The transparency of either version is apparent from the preceding discussion of the means and manner of effectuating the disputed discharges. I find the assigned motivation completely unacceptable not only due to the critical conflict between Respondent's principal witnesses but as a completely implausible explanation for Respondent's actions. If Respondent felt that absences and tardies were serious and were in fact effecting production in January and February to an extent that a more definitive rule was necessary, such a change would have been plantwide not limited to the stores department (most departments work on the L-800 loader and each have pending orders to process), and most importantly communicated explicitly to the very employees needing to improve both their production and punctuality. Therefore the real motivation must be found somewhere else.[22]

Respondent argues that Moore had no knowledge of union activity by Wagnon, Doss, or Young, and Burgess had no knowledge of union activity by Young. Moore not only admitted he knew of Wagnon's breach of the no-solicitation rule but also that Burgess immediately upon seeing Wagnon display a union button reported the fact to him. Doss and Young credibly testified to displaying union buttons and handbilling employees at the main gate. Both Moore and Burgess knew of the union activity by employees in late 1977 particularly the handbilling. Although Moore doubts that Young knows who he is that does not gainsay Moore knowing who Young is. Moore spends enough time in the department to see employees, that he recognizes as stores employees, goofing off during working hours. Doss' testimony that Burgess saw his union buttons is well supported by the use of buttons by employees and the closeness in which the stores employees work in the department plus the circulation some employees get driving the scooter throughout the plant. Further, notwithstanding that Respondent denies knowledge of union activity by Moore and Burgess relative to Doss, Young, and Wagnon, Respondent argues its knowledge of Bradford's *lack of union activity*. Knowledge of lack of union activity emanates from the same source as knowledge of union activity. I conclude that Moore and Burgess had knowledge of the union activity of Wagnon, Doss, and Young prior to their respective discharges. Further, I conclude that the motivation for their discharges was their union activity. I note particularly the absence of any substantial evidence to support any other motive advanced by Respondent. Respondent's purported reasons are therefore pretextual. Accordingly, I find that Respondent violated the Act by discharging Wagnon, Doss, and Young. The testimony of supervisors that Young could have been discharged for excessive tardiness; that Young failed to report his absences; that Young's excuses for his absences were not sufficient; that Wagnon and Doss could just as well have been discharged for excessive absences; that Doss was

[21] Director of Industrial Relations Bellatti testified that the timeclocks in use during 1977 and through June 1978 were individually set by maintenance. When complaints were lodged respecting the lack of synchronization of the various clocks, maintenance would reset each clock manually. The whistle likewise was manually set. The new semplex clocks are computerized and reset themselves and the whistle from a master clock.

[22] *Shattuck Denn Mining Corporation (Iron King Branch)* v. *N.L.R.B.*, 362 F.2d 466, 470 (9th Cir. 1966).

written up the day after his discharge for a miniscule incident which obviously occurred a day or more before his discharge; that Young was written up after his discharge apparently for facilitation of a possible theft which may or may not have occurred within the last month or so and which may or may not have been assignable to Young; and that Young was mistaken because he actually engaged in union activity only 1 week before his discharge is an attempt to shore up a defense that is otherwise lacking substance and bolsters my conclusions that the reasons for discharge were pretextual and that Respondent's actual motivation was based upon demonstrated union animus.[23]

c. *Richard Wade and Richard East*

Wade has been employed by Respondent on four different occasions beginning in 1965 as a welder trainee. Each employment term was as a welder. During the time Wade worked under Alford (approximately the last 2 years) he did not receive any reprimands relating to his work habits or how much time he spent conversing with other employees. Wade testified that he, as well as others, talked during the workday but Alford has not disciplined anyone for talking too much.

Wade's union activity was examined earlier in this decision but a portion bears repeating.[24] Wade testified that he began wearing union buttons during work after January 30. On at least one occasion, in February, Foreman Alford commented on Wade's union button. During February the small parts fabrication department was working 9-hour days beginning at 6 o'clock each morning but Wade exercised his option not to work the 1 hour overtime each day. Wade started work each day at 7 a.m. On February 10 Wade arrived several minutes before 7 a.m. When the whistle blew Alford came to his work station at 7 a.m. and told him to have certain end bells inspected and moved out of the department, then to set up end bells for welding. Wade went to get an inspector and wrote up the move ticket for the end bells. He waited in the office area for an inspector and several minutes later the inspector arrived with Alford. The three looked at the end bells and the inspector okayed them for shipment. Wade then alerted the forklift driver to bring an empty pallet and pick up the end bells just inspected. East helped him get the end bells on the pallet and told Wade they would be welding together. The forklift came to pick up the end bells at 7:20 a.m. and moved them out of the department. East then questioned the amount of weld on one end bell he was to weld. After inspecting the print and comparing it with the end bells that needed welding, consuming approximately 5 minutes, they began getting their tools-and-jig setup.[25] As Wade was getting his chipping gun out of his toolbox, Alford came up and handed him a stop card. Alford said, "I am going to give you plenty of time to talk about hot rods. I want you to put your correct name and address on this stop card and give me the Company equipment that you have got." Alford then turned around to East. Wade tried to tell Alford that they were not talking hot rods but were talking about the weld on the end bells and the print. Alford walked away. Wade gathered his personal belongings and left the plant. Wade's stop card reads, "Fooling around too much can't get started to work in the morning—warned several times before about wasting time."

East has been employed since 1971 with several breaks in tenure for various reasons. He has worked in the small parts fabrication department since December 1974. During 1975 when Alford's predecessor was foreman, East received a reprimand and writeup for backtalk but since that time he has not received any reprimands or writeups. All employees in the department waste a certain amount of time, but Alford has never complained. Alford has not disciplined East for any reason since Alford became foreman. East, for one reason or another, has seldom worked the hour overtime each day preferring to start work at 7 a.m. rather than 6 a.m.

East attended the first union meeting in November 1977 and signed an authorization card. The last week in January he distributed handbills at the main gate between shifts and distributed authorization cards in the plant. He also wore union insignia pasted to his welding hood. Shortly after East displayed the union insignia on his welding hood Alford told him that he was taking too long in the morning to get his welder hooked up. Alford stated that East was worrying too much about the union and not enough about his job. Alford told East that he had better straighten up and get more work done and less talk about the union. This was the first time Alford had said anything to him about his work, but thereafter Alford would come by and complain about his work.

On February 10 East came in late. He clocked in at 7:07 a.m. Upon arriving at his work station he was met by Alford who told him to weld end bells and that Wade would set them up. About 7:15 a.m. Wade came to the department to get some end bells moved. He helped Wade get the pallet set up then talked with inspector Charlie Winn and inspector-trainee Curtis Clark about the end bells. East found three end bells under the pallet which had been cracked and needed to be welded. The material handler brought the forklift in and removed the good end bells about 7:20 a.m. East questioned the amount of weld needed and Wade showed him the print disclosing approval of an overlap of the welds. Both he and Wade began getting their tools together on the jig. At this point Alford came over and gave Wade his stop card and then came to East. Alford told East he was going to give him and Wade all the time they wanted to talk hot rods. East testified that Alford stated that he had been a goof-off for the last 2 years. Alford gave East his stop card and sent him to personnel. East's stop card reads, "Can't get started to work in the morning has been warned several times before about wasting production time."

Alford testified that he had trouble in his department keeping all the employees busy. There was a certain

[23] I have not considered the General Counsel's argument or supporting tables appended to his brief relative to hours worked or hours paid for the central stores employees. No such issue is before me.

[24] See sec. III,B,2.

[25] Wade testified without contradiction that a new print had been released 1 week prior to his discharge which changed the amount of weld needed on end bells and allowing for overlapped welds.

amount of talking and visiting that went on departmentwide. Alford stated that he has written up employees for talking too much and for not working when they should be working and on occasion has not written up employees. He has written up Wade and East for being too slow starting in the morning and for being away from their work station visiting. The latest writeup emphasized to both that if it happened again each would be terminated. Alford said he showed each writeup to Wade and East even though company policy did not require it. Although he did not write up either Wade or East for taking too long on breaks, he stated that they always got a soda and candy bar and talked. Alford explained that the breaks are neither scheduled nor timed and each man can take a break when he is caught up. Alford testified that he observed union insignia on Wade's and East's work clothes about February 1.

Alford, on February 10, made the decision to discharge Wade and East. He did not discuss the reasons for the discharges with any employee or supervisor before making the decision. He observed their conduct himself and decided to discharge them. Alford had not discharged any employee before for the same reasons he discharged Wade and East. Both Wade and East were discharged for not starting work on time and wasting production time. Alford recalled the following:

When the whistle blew he told Wade to make out a move ticket on some end bells and have them inspected and moved out of the department. He also told Wade he would be setting up end bells. At 7:15 a.m. he saw Wade talking to different people in the department. Wade was visiting with Herb Lovell, Red Rogers, and J. W. Brooks. At 7:30 a.m. he saw Wade in his work area standing by the heater so he wrote up a stop card.

Between 6 a.m. and 7 a.m. he saw three end bells that the night shift had gouged the bad welds out of. When East came to work he told East to rework the three bad end bells and to weld end bells with Wade that day. He had not seen East doing anything that morning other than standing by the heater, so he wrote his stop card at the same time as he wrote Wade's.

Alford walked to the work stations and gave Wade and East their stop cards. When he got there Wade did not have any tools out but began taking them out when he saw Alford approaching. East only had his chipping gun out and had not welded what Alford told him to weld. The bad end bells were turned on end but were not welded. Alford did tell Wade that he could now talk hot rods all he wanted to. When he gave East his stop card, East said to Alford, "One of these days you are going to start home, and you ain't going to make it."

After Wade and East were terminated an inspector told Alford that he had already seen the end bells at Wade's work station and they were passed for inspection. Upon review of East's timecard for February 9 Alford found that he had welded an hour on end bells the day before. Alford also stated that one weld on the end bells had been changed by engineering about February 1 but he did not know the job number associated with that changed weld. There are eight different job numbers for welding end bells and he does not remember what they are nor what welding job each is associated with. Alford did not think that East's 1-hour job task performed on February 9 was the same job task he had assigned East on February 10. Although Wade's discharge consideration included visiting, Alford did not talk to any of the employees he said Wade visited the morning of February 10. Alford observed both Wade and East between 7 a.m. and 7:25 a.m. from his office where he stated he was sometimes standing and sometimes sitting.

Respondent offered employees J. W. Brooks, C. J. Stevenson, Soapy Meyers, and Weldon Dorsey as witnesses. Each testified that Wade and East wasted more time than anyone else in the department.

The record shows that subsequent to their discharge Wade and East protested that at the time of their discharge they were discussing the very end bells that Alford said they had not worked on. In addition, East protested that he was discharged because he was a union organizer. Bellatti, who was present in personnel, told East that he was terminated for poor work performance and that he was not protected for unsatisfactory performance during a union organizational attempt.

Analysis and Conclusions

Alford discharged both Wade and East for failure to get started to work soon enough after their shift started. The period of time contended to be wasted is approximately 20 minutes. Respondent argues that both Wade and East were warned about wasting time prior to their discharges and points to the language on each employee's stop card.[26] Alford stated that he showed each EIR to Wade and East after he wrote them up contrary to the company rule which does not require such disclosure to the employees. Wade and East deny Alford ever showed them an EIR or discussed their work habits prior to the union activity. Alford's disclosure that he does not writeup every employee for all infractions places an additional burden on the resolution of the fact issue. An oral criticism of an employee is more easily forgotten (particularly when not accompanied by employee protest or discipline) than written criticism. Wherever oral discipline replaces written discipline the objective value as a future deterrent suffers much the same as any discipline program that does not utilize objective standards to measure the ultimate effect of prior discipline. Without standards an employee does not know at any one time where he stands on the ladder of discipline. East thought the employer had a three-time rule for discipline: warning, suspension, then discharge. Respondent argued that the published rules clearly show no such graduation. The published rules do, however, allow for discipline ranging from reprimand to disciplinary layoff, to termination of employment, so East's understanding is not completely without the realm of reason or the company rule. Where the two part company is in the administration of the rule. In my view, if discipline under any rule is to have meaning the employees should be able to chart their respective positions based

[26] I find the prior warning language on each stop card somewhat suspect, however my findings are in no way based upon the language of the stop cards.

upon past written disciplines. Respondent's administration of the rule makes no provision for accumulation of disciplines by the employee. Alford's implementation of the same rule denies an employee the basis for accumulation of disciplines. The employee, therefore, is left with an unknown as to what will happen next. Leadman Stevenson stated that the one EIR he issued he attempted to have the employee sign because someone had told him that was the procedure. Whomsoever the source, it would appear, it was not Alford or management. Respondent's rule does not require it and the printed form makes no provision for employee signatures. Thus, Respondent's rule makes the accumulation of discipline, necessary to support discharge, whatever its preference is at the time. Although judgment is a matter for Respondent, where union sympathizers are disciplined in circumstances evincing disparity the burden is on Respondent to show equal treatment for all employees. Neither Respondent's rule nor Alford's application of the rule evinces equality. In the last analysis the opposite is shown. The fellow employees who testified that Wade and East wasted time were nonspecific. It was collectively nondetailed and conclusionary in response to leading questions. With the exception of Meyers' statement that the work stations of Wade and East were farthest from the break area, I find nothing of probative value in the testimony as a whole. Further, Brooks, while on the stand, did not allude to the alleged fact that Wade was visiting him on the morning of February 10. The other two employees named by Alford as being visited by Wade were not called to testify.

Assuming *arguendo*, if Alford did show the prior writeups to Wade and East his arbitrary determination of who to writeup and for what, or who not to writeup, influences the weight to be given to the prior disciplines. I conclude that the prior writeups, whether or not they were disclosed to Wade and East, have very little probative value in determining the lawfulness of the discharges. I find therefore, that the discharges are not an automatic consequence of events as Respondent argues. It may appear that any enforcement of discipline under the Employer's rule, and especially by Alford, would suffer similar conclusions, but that it is not the case. An employee may engage in conduct that would cause his discharge in any event. The question becomes: Did Wade and East engage in conduct warranting discharge in spite of their union advocacy? I find the question answered in the negative for the reasons stated hereinafter. Wade admitted he was told to have some end bells inspected and get them moved out of the department. Wade credibly testified that he sought out the inspector and did in fact have the end bells moved out of the department. The testimony lies uncontroverted. Alford did equivocate on the inspector in the department but did not substantiate that Wade did not have the end bells inspected. Neither did Alford question the movement of the end bells out of the department by Wade.[27] Alford stated that he assigned Wade and East to work together on end bells but does not deny the testimony of Wade and East that they worked together in moving the end bells out of the department. Alford assigns Wade's visiting with other employees as the spark for discharge and enumerated those employees visited. Alford did not, however, question the employees to confirm that Wade was in fact visiting before he discharged Wade. Brooks, as stated earlier, was called by Respondent to testify but did not mention the alleged visitation. East admittedly was instructed to rework three end bells prepared by the night shift the evening before. The instruction to East was sometime after 7:05 a.m. because he clocked in after 7 a.m. Alford did not see East visiting other employees or doing anything at all. Alford's vantage point in his office may disclose arcs made by welding but it hardly gives Alford a view of the work station separated from his office by other work stations. Wade and East testified, without contradiction, that the three end bells to be reworked were found under the pallet full of finished end bells after it was moved out of the department. East's testimony that he questioned the weld to use on the end bells is supported by the credible testimony of Wade, and Alford's admission that a welding change had been made shortly before by the engineering department. Wade's testimony showed that East's inquiry was based upon the exact change which had been made in the print. The testimony offered to show that East was familiar with the weld on the end bells, though credited as an accurate account of East's job task the day before, it is discredited as the same job task that East was assigned on the day of discharge. Alford admitted that there were eight welding operations on the end bells and he could not identify any by number. The timecard entry therefore does not dispute Wade's nor East's testimony of consulting the blueprint. Alford's testimony shows that he did not know what East had done or was doing prior to the time he gave East his stop card. It was only when Alford got to the work station with the stop card that he saw East had his chipping gun out of his tool box and that the end bells were standing on end contrary to the position in which he had last seen them. I credit East's account of Alford's remark when he handed East his stop card. Alford stated that East had been a goof-off for the last 2 years. I find the remark instructive of Alford's tolerance of East's habits prior to the union activity as contrasted with the discharge less than 2 weeks after East displayed union insignia while working. One can only conclude that Alford had Wade and East mentally associated as one and targeted his discharge.

It is abundantly clear to me, from the record as a whole, that wasting of production time by Wade and East, to the extent contended by Respondent, did not occur on February 10. Therefore, considering the timing of the discharges relative to union activity in the department and the absence of compelling reasons for discharge, I find the assigned reasons for the discharges of Wade and East are pretextual and the real reason was the open display of union sympathy by Wade and East

[27] The material handler that Wade testified had moved the end bells was not called to testify.

on February 1 and thereafter.[28] Accordingly, I find that Respondent has violated the Act by the discharges of Wade and East.

d. *Billie Sanders and Vickie Mayo*

Sanders began employment in August 1977 as a spot welder on the carrier assembly line. His regular shift was 7 a.m. to 3:30 p.m., but he may begin at 6 a.m. occasionally to make a 9-hour day. Prior to January the carrier line had averaged about 75 parts an hour with the exception of the presses which are the second operation in the line. The presses usually worked only 8-hour shifts to produce the average whereas the other operations frequently worked a 9-hour day to meet production quotas. Although there is an average hourly quota it is not static. The quota may increase or decrease due to customer demands. When the customer requires more the line is asked to produce more. On occasion when the line was asked to produce more Sanders asked if he could work overtime to get the extra production but Wilkerson said the production had to be in 8 hours. Seventy-five parts an hour would produce approximately 16 cartons a day. Each carton contains 34 completed parts. Billy Craig, Sanders' partner on the spot welder, in late 1977 had been terminated because he could not set up enough parts for Sanders to spot weld 75 an hour.

Approximately mid-January Foreman Wilkerson began asking the line to produce about 100 parts an hour with the exception of the presses which were asked to produce 125 parts. Seldom did the presses produce the 125 quota or the remainder of the line produce 100. On January 12 Wilkerson moved Sanders to the automatic welder, a one-man operation, because Sanders was talking too much on the spot welder. This same day Vickie Mayo was hired to work on the spot welder. During the following week Wilkerson was prodding the line to produce 100 parts an hour. He met some opposition to the quota because employees felt it was too high. Among those employees complaining was Sanders and Mayo. On February 3, an occasion when Wilkerson was prodding Sanders to produce more and get out enough for 25 boxes, a verbal altercation ensued. Sanders was given the option of getting his production up or leaving his employment.[29] Sanders decided to stay on the job. On February 7 Sanders was moved back to the spot welder to work with Mayo. This same day Wilkerson told Sanders and Mayo to concentrate on production and get out 100 parts an hour. Both employees complained that 100 parts were too many and Wilkerson asked if they would work over to get more parts. Each replied, "No." Wilkerson ordered a timestudy of the spot welder operation to determine the hourly rate for parts. The timestudy was accomplished by the industrial engineering department on February 12 and 13. The study showed 102 parts an hour as a valid quota. Wilkerson informed Sanders and Mayo that 102 parts could be made per hour but just get 100 to meet the quota. Both Sanders and Mayo protested the quota but Wilkerson said the customers' requirements had to be met. The following day Wilkerson took the whole line outside the building into the yard. He told them of the timestudy and that he expected 25 boxes per day or 100 parts an hour. All the employees were told that those who did not meet the quota would be written up for the failure and three writeups would mean termination. The line then returned to work.[30]

About 3:20 p.m., Wilkerson asked the employees on the line to stay long enough to finish the partial carton because it would fill the truck and it could leave. At this time 14 to 15 parts were needed to complete the carton. At 3:25 p.m. Bob Ewing, the leadman, saw Sanders and Mayo take off their gloves. Sanders left to wash up. Ewing asked Mayo if she was going to help finish the box. Mayo asked if it meant working over and Ewing responded that he did not know. Mayo said she would not stay past 3:30 p.m. Wilkerson came up and Ewing reported the incident to him. Wilkerson called to Mayo before she got to the wash area and they began talking. Wilkerson was explaining to Mayo the amount of time required to finish the carton and how the pay would be figured (the line was already on overtime) when Sanders approached and began arguing with Wilkerson. Wilkerson told both Sanders and Mayo if they leave don't bother to come back tomorrow. Sanders became loud and belligerent and wanted to know why he and Mayo were fired. Wilkerson replied that they were not fired. He considered that they had quit. Mayo stated that Sanders was hollering at Wilkerson who was trying to talk to Sanders but when Wilkerson couldn't be heard he just walked off. Sanders and Mayo left and went to personnel and talked to Buddy Stahl. Stahl said they were suspended pending a final determination. Mayo signed the statements she gave to Stahl but Sanders did not sign the statement he gave to Stahl. The stop cards for Sanders and Mayo show that each were discharged on February 16 for unauthorized leaving of the work area and refusing to work overtime.[31]

Mayo testified that the day she was hired Wilkerson asked what her prior employment was. She stated Schlitz and Wilkerson asked if the teamsters were there and had she been a member. Mayo replied that she was a member and had a withdrawal card. She also told Wilkerson that her husband worked at UPS which was also teamsters. Mayo admitted that she did not list the Schlitz employment on her application in January. Mayo also gave out two union cards but did so in an area where no supervisor could see her. She also talked to some of the employees handbilling between shifts as she left the plant.

Mayo stated that the day she was discharged by Wilkerson she quit at 3:25 p.m. because she understood she would not be paid overtime. Mayo testified that Wilkerson did not attempt to explain the time and pay situation to her before she left the plant. Bob Ewing had told her

[28] *Shattuck Denn Mining Corporation supra; N.L.R.B.* v. *Dorn's Transportation Company, Inc.*, 405 F.2d 706 (2d Cir. 1969).

[29] This altercation and Sanders' involvement in union activity was determined in sec. III,D,1.

[30] The above is based upon admissions and undisputed testimony from all witnesses.

[31] The above is a composite of testimony from Ewing, Wilkerson, Mayo, and Sanders. The portions of the testimony concerning the cursing between Sanders and Wilkerson and the glasses-throwing incident of Mayo are disputed, however, I do not consider them germane to my determination and therefore have not repeated them here.

they would not get paid for the time and that the other employees were doing it just to be human.

Employees Ewing, Ross, Walker, and Tanner testified that Mayo never mentioned the union to them nor did she display any union insignias. Each testified also that Sanders was difficult to get along with.

Montgomery testified that the day before Sanders was discharged Wilkerson was talking to her at the press and said that Sanders talks too much when he should be working.

Wilkerson testified that overtime is not mandatory and he usually gives the employee the choice, unless it is a situation where an order has to be finished and then he expects all employees to work to finish it. In the past he has told employees to stay and finish a particular order and they have done so. Mayo had not been asked before to stay to finish an order but Sanders had been asked and has stayed.

Analysis and Conclusions

The General Counsel alleges in the complaint that Sanders and Mayo were discharged on February 14. Respondent's answer admits the allegation as alleged but Respondent's evidence establishes a suspension by Wilkerson on February 14, and a discharge by the personnel department on February 16. These circumstances do not present a conflict because, in my view, Wilkerson's action was tantamount to a discharge on February 14 without regard for the personnel department's activity.

With the exception of the union activity of Sanders and Mayo and the circumstances surrounding Mayo quitting production at 3:25 p.m. on February 14, there is little dispute over what occurred. My previous finding on Sanders' union activity encompassed all the evidence from which knowledge of the Company could be inferred. Therefore, Sanders' discharge, viewed independently of Mayo's, is unrelated to union considerations. However, the undisputed facts show that Sanders and Mayo worked as a team and quit as a team on the critical day. Due to a possible association of the two I shall consider the facts surrounding both discharges.

Mayo's testimony of her discussion with Wilkerson on her first day is intended to establish her union activity and Wilkerson's knowledge thereof. Although Wilkerson's denial was simple, I credit the bulk of his testimony. Wilkerson appeared straightforward and not hesitant to recall the events. I was impressed with his demeanor and general attitude on the stand. Mayo, on the other hand, appeared determined to tailor her testimony to her benefit rather than honestly recall all the facts. I find that admissions contrary to her direct testimony which came out on cross instructive of her veracity. I have previously discredited Mayo in this decision and I find I cannot credit her now. The inconsistencies and contradictions in her testimony cause me to discredit her on most all critical points particularly the testimony relating to her union activity and Wilkerson's knowledge of it.[32]

In addition I credit the testimony of leadman Bob Ewing relative to Mayo's questions of working past 3:30 p.m. wherein he testified that Mayo only asked if the employees were going to work over. Further support for this resolution is found in Mayo's signed admission to personnel man Stahl and Sanders' admission that Wilkerson asked them to work long enough to finish the carton so the truck could leave.

Contrary to the General Counsel's argument that Wilkerson came down hard on Sanders after the union activity the facts show clearly that Sanders' production suffered because of his proclivity to talk too much and prior to any alleged union activity. Mayo herself acknowledged that Wilkerson was always telling Sanders to speed up and keep it moving from the day she was hired. Conversely, Mayo testified that Wilkerson never got on her to keep up production when according to her Wilkerson had knowledge of her union involvement even before he was alleged to have known of Sanders.

The undisputed facts show that Wilkerson wanted more production from the spot welder even before the alleged union activity began. He also wanted increased production from the presses and eventually he discussed the production needs with the entire line. It is clear to me that neither Sanders nor Mayo was happy with the new quota nor did they feel they could produce such a quantity. Sanders knew that his prior partner had been terminated for failure to meet a quota less than Wilkerson expected at this time. Even the General Counsel admits that Sanders and Mayo would have been discharged soon because of low production. I view this admission as acknowledgement that Sanders and Mayo would not or could not improve. The advent of the timestudy and Wilkerson's pronouncement that the production had to be done in the scheduled time or suffer discipline was more than Sanders and Mayo could stand.[33] Wilkerson had denied them extra time so when he asked them to stay extra and finish the last remaining carton they refused. Sanders had been told previously to stay in such circumstances but Mayo had not. Mayo did know what the company rules were as a result of her prior employment and familiarity with the employee booklet. Her protestations, that she feared she would not be paid for working or that by the company rule she had to be out of the plant within 15 minutes of shifts' end, offered as her reasons for not continuing to work are totally implausible and unpersuasive. I conclude that Sanders and Mayo refused to stay and help complete the carton in a spirit of noncooperation with Wilkerson. Wilkerson had requested their presence as required by the company overtime policies with respect to pressing customer product deliveries and Sanders and Mayo had arbitrarily refused. The other employees stayed to finish the carton without the help of Sanders and Mayo. If Wilkerson's request involved hours there may be room for argument but here the time involved was only min-

[32] The testimony of the other line employees was limited but the General Counsel's witness offered no testimony of Mayo's union sympathies. Mayo's alleged reference to Schlitz as to her former employment skips three former employers and reaches back 4 years.

[33] The evidence regarding the supporting purpose for some employees working 9-hour days and others working 8-hour days is incomplete but it is clear that on February 14 the entire crew was working a 9-hour day. Apparently, machine breakdowns cause subsequent overtime to make up lost production.

utes. I find that Wilkerson's discharge of Sanders and Mayo was based upon the unexplained refusal to work as requested and was not motivated by any impermissible considerations such as the union activity in the plant. Therefore, I find that Respondent has not violated the Act by discharging Sanders and Mayo.

e. *George Brewer*

Brewer was hired by the Company June 2, 1977, for the second time. He had worked for the Company in 1971. When hired in 1977, he asked to work in Turner's department so he could be a helper to Rapp. He was assigned to that department to work the 4 p.m. to 12:30 a.m. shift. Rapp, in Turner's absence, assigned him a buffing job but Brewer did not like it. Brewer stated that it was a boring, miserable job; the same thing over and over and the glass particles would get on your clothes. After working four nights on buffing he laid out of work so he would not have to do anymore buffing. If Turner assigned Brewer a job he did not like, he would tell Turner he did not want to do it and Turner would assign him something else. Brewer testified, "Me and Turner were real good friends then. He knew I would work if you gave me the right job."

Brewer began his union activity shortly after the first union meeting in November 1977. Brewer testified that Bellatti saw him handbilling and on one occasion, approximately December 5, 1977, a gate guard requested his name, badge, and department number to report his handbilling activity. Brewer was due a merit raise December 2, 1977, but did not receive it in his pay. On December 16, 1977, he went to the office to check on his raise and spoke with a clerical, Tippitt. Her check of the rate card revealed Brewer's receipt of the merit raise plus the general increase. She said it must be a computer foulup because it was posted, and he should have gotten it. Brewer then went to see Bellatti to check on the raise. Bellatti told Brewer he would check on the raise. Brewer then told Bellatti he wanted to get Fox off his back because Fox was riding him during working hours. Brewer said Fox did not have to harass him like he was doing just because Brewer was a union organizer. Brewer yelled, hollered, and sang a lot and Fox told him to stop it. Brewer said the employees liked it and expected him to do it and it was not hurting anyone. Brewer also stated that Fox insisted that he buy his own tools and quit borrowing Turner's. Brewer testified that he was due a reclassification and pay increase if he used tools so he told Fox that when he got the increase he would buy the tools. The next day Turner gave Brewer a toolbox and several tools. Brewer bought pliers and the Company furnished sockets. In early January, Brewer, during working hours, began wearing a Teamsters vest with several Teamsters buttons pinned on the outside.

On January 3 Brewer damaged an outside door with a forklift. He claimed the door was faulty when he reported it to Fox. He told Fox, "We both met at the door and he stopped it, or the door slid down or something, but I hit the bottom of it." The next day, Brewer stayed home on Fox's orders pending an investigation. On January 6 Brewer was suspended by Bellatti who also stated that Brewer's raise would be suspended until February 1. Brewer again asked Bellatti to have Fox stop his harassment. Brewer told Bellatti that he suspended him because of the union. Bellatti responded that he did not care about Brewer's personal life. Bellatti also told him that additional damage to company property could result in discharge.

On January 17 Brewer was moved to the oven. He testified that the oven smelled terrible and was a miserable job. The ventilation and air conditioning was bad and created a health hazard. On January 25 Brewer was being instructed by Turner on how to do a certain job and Brewer told Turner that he did not know what he was doing. Brewer had come out of the oven and hollered his criticism to Turner. Fox heard of the incident and told Brewer to stay in the oven and work by himself. Brewer testified that Fox forbade him asking Turner for help. On January 26, Brewer, during shift, called Chuck Jones, the safety director, at his home and reported that he was afraid to work alone in the oven. Jones came to the plant that evening and told Brewer that he could have help whenever he needed it. The following night Brewer dropped a D-7 armature weighing approximately 3,000 pounds. He stated that a cable on the hoist was faulty and had been declared unsafe but he was told to use it anyway. Brewer further claimed that a homemade hook was unsafe because it did not have a safety latch and that all the equipment in the oven was old. Brewer also stated that the company safety man told him that the oven and equipment had been inspected by OSHA and was certified safe.

On February 2 Brewer asked Bellatti about his raise that had been suspended and Bellatti told him the raise was canceled because he dropped the armature. Bellatti also told Brewer to talk to Fox. Brewer testified that Fox screamed at him that he doubted Brewer would ever get a raise and he was not going to get any help in the oven. Brewer stated that he suggested a ridge around the table in the oven to a safety man who expressed that it was a good idea, but later Plant Superintendent Malone said the table would not be changed.

On April 4 Brewer asked Turner and Whitwell, the supervisor of the oven crew on days, to help him get on the day shift. Turner said he could not help and Whitwell suggested he talk to Fox, so Brewer took his request to the president of the Company. Shortly thereafter Plant Manager Dan Jones, Malone, and Fox came to the oven. Brewer testified that Malone said, "Don't worry about getting on days or in the evening. You are not going to be here that long anyway." During shift Saturday, April 22, Brewer dropped another armature but it was an L-1 which is slightly larger than a D-7. Brewer claimed that the faulty hook became disengaged allowing the armature to roll off the table. He could not stop the armature because he did not have his gloves on and the armature was hot. He had blocked it with several bolts instead of using wood chocks. Brewer said the wood chocks were not in the oven at that time. On Monday Fox learned of the damaged armature and suspended Brewer. On April 25 Bellatti discharged Brewer for repeated damage to company property.

Brewer testified that he did not know of any other armatures being dropped in the oven but employees elsewhere dropped them all the time without being disciplined. Brewer stated that it was no big deal to drop an armature. He had dropped several others which he immediately repaired and they were used. After dropping one armature he requested a special hook and engineering made him the hook. Chuck Jones told him it would not work but Brewer tried it. He discarded it shortly after he got it. Brewer stated that Stanley Turner worked in the oven by himself before he was assigned the job in January; however, Turner did not do the volume of work that he had to do. Brewer acknowledged that on the day shift Stanley Turner's son works in the oven himself most of the time. Brewer stated that he heard that the Company had used the second armature he dropped. Brewer acknowledged that Fox, Turner, and leadman Ritchie had spoken to him on several occasions about talking too much to employees who are working, yelling, and hollering, not doing a job completely, damaging parts and not using the equipment properly. Brewer did not recall seeing any writeups referring to these past instances however. He did remember Ritchie making a note once on a damaged small armature.

Haskell, a material handler, testified that he ran into a door with his forklift and knocked the glass out but was not disciplined for it. On another occasion he was carrying three L-1 armatures with his forklift to the electric building to be wired. He hit a hole in the floor jarring the armatures off the skid onto the floor. Two of the three armatures were damaged. He was not disciplined for the accident. Haskell also dropped some motors which were damaged but the forklift chain gave way so it was not his fault. Haskell was a union supporter and wore his button while working. He had his union button on when he damaged the motors and armatures. Shortly after the armatures were dropped the Company changed the design of the skid and gave the new skid to Haskell to use. Haskell stated that his foreman, Gray, has not written him up for any of the damages as far as he knows.

Parker, a motor winder in Brewer's department, testified that the L-1 armature dropped by Brewer was repairable because the damage was slight. In the past he has simply knocked coils back out so they are straight and sent the damaged piece to the next operation. Parker stated that when he first viewed the L-1 only the coils were bent. The commutator and risers were not damaged nor was there any inside damage to the coils. Rapp and he beat the coils back straight and it was OK. We took about 2 minutes to straighten out the coils. Parker stated that he has done all the operations in the oven and on several occasions worked in the oven by himself. He has not had any equipment failures or dropped any armatures while working in the oven.

Tolbert, a dome #2 employee, testified that he looked at the L-1 armature that Brewer dropped while it was in his department. The only damage he saw was to the banding. A piece was torn away from the band. The commutator looked like it was in pretty good shape. Tolbert saw another armature with a badly damaged commutator about the same time that Brewer dropped the L-1. He did not know whether that commutator was reworked or not. Tolbert stated that his identification of the armature he inspected, as "Brewer's," is based upon what other employees told him. He did not know where the salvage area of stores was and had never been there.

Coppedge, a motor winder, testified that he only saw coil damage to the armature that Brewer dropped but he did not go over the armature thoroughly. Coppedge stated that they repair damaged coils all the time but he doesn't do the repairs himself. Neither does he test the armatures. The next day he saw the material handler take the armature to salvage and he did not see it again. He stated that minor damage is never sent to salvage. Coppedge saw another armature damaged on May 6 and as far as he knew it was repaired. He believed it was the same as an L-1. He stated that even those that he saw or thought were repaired could be eventually scrapped because he does not see them again. Coppedge recalled that about 1-1/2 years ago he and Impson dropped a 700 KW motor and neither was disciplined for it. The damage was slight and immediately repaired. He stated that we have things that people just made up there to pick up stuff with and it was all old.

Hampton, a forklift driver, testified that he never has dropped an armature. He does not handle the new ones, he only handles scrapped armatures. He washes them and takes them to salvage where they take them apart. He has not told any employee that he dropped any armatures. Hampton works under the supervision of Whitwell but has never worked in Foreman Gray's department.

Hardee, a motor winder, winds the coils on most of the L-1's in the shop. He saw the L-1 Brewer dropped by his workbench the Monday after it was dropped. He inspected it and found damage to the coils, banding, risers, and the commutator. He did not check the armature out electrically but it could not be mounted in the shape it was in. Hardee stated that you would not be able to put a pinion on the shaft because of the bent metal band under the coils. If you beat out the metal band to accommodate the pinion the beating would probably damage the coils further. The equalizers under the coils could be damaged but you can't tell without taking the banding wrap off the coils completely and removing the banding wrap could further damage the coils too. Neither he nor Mack Ray picked up the armature to work on it. Hardee did put it in his banding machine but did not do any work on it. Hardee did not electrically test the armature.

Stanley Turner testified that he saw Brewer run into the door with the forklift. As Brewer approached the door and it started up he had his head turned talking to some girls. He continued moving the forklift while talking to the girls and hit the door. He had not raised the door high enough to clear the forklift in the first place. Turner was working the night Brewer dropped the L-1 armature. He had the armature moved out of the oven and told Rapp and Parker to try to beat out the coils. After several minutes of beating, with little or no progress, Turner told them to leave it for the day shift and he put a tag on it. Turner also stated that he has worked

alone in the oven for a month or more and never had any problems with the equipment. Neither the fumes nor the heat presented any problems so long as the units were working. Turner did not think the oven was a bad job.

Chuck Jones, safety engineer, testified that he responded to Brewer's telephone call on January 26. He met Brewer at the oven and Brewer claimed he was instructed to stay in the oven and not to ask for help. He also said the lifting hook was unsafe. Jones examined the hook and discussed its proper use with Brewer and several other employees. Brewer wanted a special hook made for him to use in the oven. Jones agreed to supply Brewer with the kind of hook he had suggested. Jones had Fox and Turner come to the oven. Fox stated that Brewer had misunderstood the instructions. What Brewer was told to do was stay at his work station unless he needed assistance or was going to the restroom. When he needed assistance Turner would supply it. Brewer was not to attempt any job alone which required assistance. Fox had also told Brewer not to take up other employees' time with stories or singing. Jones informed Brewer that the oven area was inspected regularly by OSHA, the State of Texas, and the insurance carrier. No citations of deficiencies have been issued. Jones stated that he has no knowledge of any equipment failure in the oven.

Davis, the principal inspector, testified that he inspected the L-1 armature, which Brewer had dropped on April 22, on Monday morning, April 24. He found damage to the windings, risers, and the commutator. His inspection disclosed bare wires where the insulation had broken off which indicated internal damage to the insulation. This meant the windings were grounded and could not take an electrical test. Davis stated it would be unsafe to personnel and machine to give the armature a full test. At 4,000 rpm the armature could burn badly, possibly even explode, and hurt someone. He filled out the scrap ticket and sent the armature to salvage for final review by the Company's scrap committee.

The Company's scrap review committee is composed of Whiteside, director of quality control; Dan Jones, plant manager; and Whitehurst, vice president of manufacturing. Whitehurst was out of town in April so the armature was reviewed by Whiteside and Jones. Their decision to scrap the armature was based upon the conditions of the coils, with bare wires exposed in the windings; the damage to the riser bars which cannot be repaired without being dismantled and replaced and the condition of the commutator. The gouge on the commutator was almost .0062 of an inch. Whiteside stated that the depth of the gouge was almost one-half of the thickness of a finished commutator. Whiteside and Jones agreed that with $9,000 in the armature at this stage of production it would not be feasible to expend additional funds to make it usable. The reworking cost would be high so the least expense to the Company was to scrap it.

Rapp, an armature winder in Brewer's department, testified that Turner asked he and Parker to look at the L-1 armature that Brewer dropped when it first came out of the oven. Turner asked Rapp if he thought anything could be done. Rapp said maybe they could beat the coils back straight. Turner said to try. Rapp tried for awhile but Turner later said to leave it for the day crew. Rapp stated that beating bent coils straight with a hammer and board can only be done when it is hot and any electric test must be done when it is cold. Beating coils straight with board and hammer happens infrequently. Rapp, himself, had never attempted it before on an armature as large as the L-1.

Dorough, an employee in generator assembly, testified that the commutators on the L-1 armature are purchased from an outside supplier. The manufacture of the armature requires the Company to turn the commutator to a certain size. This sizing is done on the armature after it has been through the operations that Brewer's armature had been through. The amount of turning down to size depends upon the size it was when purchased. Dorough stated that he knows of some commutators being turned down as much as .0060 of an inch, however, he does not perform the turning operation. After the commutators are turned down they go to the undercutter for the mica between the commutator bars to be cut to a depth below the surface of the bars. Dorough cuts the mica down .0046 of an inch. On one occasion his machine misread and cut into the bar. He sent the commutator back for returning to remove the bad cut the undercutter made on the bar. Dorough stated that based upon his experience a commutator coming from the oven could be turned down in excess of .0100 of an inch without lowering the standard for the armatures. Dorough further stated that he did not get a good look at Brewer's L-1. He could not see the commutator at all but he did see that the coils were bent and broken a little. Dorough said he had no knowledge of rework on any commutator.

Bellatti testified that his first meeting with George Brewer was on January 6. The meeting concerned the damage to the overhead door caused by Brewer. In this meeting Brewer identified himself as a Teamsters-activist. Brewer was informed that his pay raise was being withheld due to the door damage. Bellatti saw Brewer again after he dropped the armature on April 22. Bellatti informed Brewer that he was suspended pending an investigation. Bellatti's investigation disclosed that Brewer had failed to follow established procedures of blocking with wood blocks which resulted in damage to the armature. Bellatti told Brewer on April 25 that he was terminated for repeated damage to company equipment. Bellatti denied discussing Brewer's December pay raise with him or with Fox on December 16, 1977.

Tippit, a personnel assistant, testified that Brewer came in to see her in December 1977 about a raise he thought he should have. She checked Brewer's rate card and it showed a raise to $4.84 effective December 5, 1977. The card did not reflect the general increase of 8 percent that had been effective November 28, 1977. Tippit told Brewer there must have been a computer foulup and she would have to check it out. She probably told Brewer that if the raise was due it would be retroactive to December 5, 1977. After Brewer left she found that his apparent raise on December 5, 1977, had actually been disapproved and was posted in error with the 8-percent

general increase. Tippit lined through the entry and posted only the general increase of 8 percent making the rate $4.73 effective November 28, 1977. The corrections to the card were made on December 17, 1977. Tippit testified that the clerical, Hunter, erroneously made the entry on Brewer's rate history card when the approval slips went out to the foremen rather than after the foremen returned them to the office either approved or disapproved.

Malone testified that he, Dan Jones, and Fox indeed talked to Brewer in the oven at the president's request. Malone told Brewer that he was responsible to Fox for all his work. Malone denied any conversation with Brewer about transferring to days and specifically denied telling Brewer not to worry about days because he would not be there much longer.

Foreman Gray testified that Haskell did drop several L-1 armatures on May 1 resulting in slight damage to one. He investigated the incident and found that the floor where Haskell had the accident was uneven and had several potholes which may have contributed to the accident. Gray also found that the skids used for the L-1's were not capable of containing a load when such a road surface was encountered at forktruck speeds. Gray redesigned the skid and ordered new skids for the L-1's. Haskell was written up for the damage and careless driving and counseled by Gray. The armatures were repaired in about 30 minutes. Gray also investigated the broken glass in the door in January and found that the accident was caused by the wind blowing the door into Haskell's forks as he had reported. The damage was slight necessitating replacing the glass only. Gray was not aware of any accident involving J-motors in April due to a faulty forklift chain. The daily vehicle maintenance records kept by Haskell on his forklift did not reflect any such vehicle trouble in April. Gray was aware of only one other armature being dropped and that was in the electric building.

Foreman Fox testified that he had written up Brewer several times in the past for talking too much; keeping other employees from working; yelling, singing, and hollering during shift; not performing his job satisfactorily; not using equipment as instructed and damaging company property. In January, when Brewer damaged the door, Fox investigated by getting the facts from Brewer, Turner, and Amos. Brewer told Fox what happened when he reported it to Fox. Turner saw the accident, and Amos was the stores employee on the scooter who was coming through the door at the same time. Amos told Fox that he only raised the door high enough to get his scooter through the door. Amos got through first and Brewer's forktruck would not get through unless he raised the door higher. Brewer did not raise the door higher and his forktruck hit the door. Turner stated that Brewer was preoccupied with girls as he was moving through the door and not paying attention to the door. Fox suspended Brewer for 3 days and wrote him up for careless handling of the forklift. When Brewer dropped the D-7 armature on January 28, Fox wrote him up for careless operation and damage to company property. Fox stated that the D-7 was repaired and continued on the production line. Brewer dropped an L-1 armature on April 22 during shift. Fox was not on duty but returned on April 24. Upon learning of the damaged armature Fox suspended Brewer pending investigation of the incident and wrote up Brewer for carelessness resulting in extensive damage to an L-1 armature. Fox told Brewer that personnel would get in touch with him. Fox stated that the first he knew of Brewer's union activity was during the January 6 meeting with Bellatti when Brewer announced he was a union organizer.

Analysis and Conclusions

The General Counsel alleges four counts of discrimination by Respondent against Brewer: (1) denial of a pay raise retroactive to December 5, 1977; (2) suspension on January 6; (3) reassignment to a more onerous job task on January 17; and (4) discharge on April 25. Respondent offered a defense, to each count of discrimination, which involved Brewer's conduct on the job. In each case Brewer admitted the conduct as recorded and relied upon by Respondent. The General Counsel contends, notwithstanding cause, that Respondent reacted through animus toward the union campaign being conducted by some of its employees. The General Counsel argues that Brewer was an early, staunch, high profile, prounionist employee, who was important to the campaign. A comic strip, antiunion leaflet was offered by the General Counsel and claimed to show Brewer's stature during the campaign. The reference is only to a "George" in the leaflet. There is no evidence subjective or otherwise to identify the "George" depicted as Brewer. I do not conclude that the portrayal in the leaflet is George Brewer. The portrayal could be any "George" or an impersonal reference to a very common given name. Brewer's testimony of the guard's and company officials' knowledge of his handbilling in November 1977 (basically the extent of his union activity until January when he began wearing union insignia on his work clothes) is too conclusionary and speculative to warrant an inference that Respondent had knowledge of his union activity. Further I do not credit Brewer's testimony in this respect. It was too pat and matter of factly to be believable. Assuming, *arguendo*, Brewer was one among many who handbilled and the record is silent on any facts to establish Brewer as something other than a handbiller like the other employees. In any event, there is no evidence to establish Brewer's, contended for, primary purpose to the employee's campaign. I therefore find that Brewer's status during the campaign was identical to many other employees who displayed union sympathies and that Brewer displayed in earnest in January.

In summary the General Counsel argues that Brewer was disciplined not for cause but for his union activity. The General Counsel contends that evidence he elicited shows that nonunion employees who were guilty of the same infractions were not disciplined. Thus, Respondent was disparate in its treatment of union employees as contrasted with its treatment of nonunion employees. A Respondent may be found to be discriminating against union sympathizers in one instance but it does not follow that all union sympathizers, who are disciplined by Respondent, are discriminated against. The General Coun-

sel has the burden of proving discrimination against each individual alleged as a discriminatee. For the following reasons I conclude that the General Counsel has not sustained his burden of discrimination against George Brewer.

Fox testified that he did not feel Brewer was due a step increase on December 2, 1977, but to be fair to Brewer he discussed the appraisal with Foreman Whitwell. The consensus was to disapprove Brewer's increase because of his performance up to that time. Whitwell was Fox's backup supervisor which makes Fox's consultation reasonable including Whitwell's disapproval rather than Fox's on the increase approval slip. Fox's conclusion is adequately supported by the two admitted deficiencies in Brewer's work performance occurring in October and November 1977. The error in posting by the clerical staff of Brewer's rate history card was credibly explained by Tippit. I do not credit Brewer's testimony that he spoke with Bellatti on December 16, 1977, about the raise or that he saw Bellatti on that occasion. Bellatti denied any such meeting and I credit Bellatti's denial. The probabilities, more reasonably, dictate that Brewer first spoke to Bellatti on January 6 concerning his wage, otherwise there would have been no reason for the January 6 meeting. Any investigation by Bellatti on December 16, 1977, would have disclosed the error and Brewer would have known of his raise status then. The failure of the clerical to follow up with the employee is hardly evidence of discriminatory withholding. The objective evidence evinces a return of the disapproval by supervision within the time specified on the increase approval form which either predates Brewer's union activity or fails to support discriminatory intent for such minimal union activity at that point in time. I note, particularly, that Brewer's most recent writeup prior to the due date for the increase was November 17, 1977, which is prior to Brewer's union involvement by 4 or 5 days. Additionally, I find Brewer's self-characterization of when and how he will work on a particular job, is instructive. If he likes the job he will work, if he does not like the job he will not work. Also, by his own testimony, his individual job selection was only valid with Stanley Turner. I conclude and find that Respondent's denial of the step increase on December 2, 1977, was not discriminatorily motivated but rather was work related.

The suspension Brewer received on January 6 was argued by the General Counsel to be motivated by Brewer's union activity not the claimed damage to the plant door. The General Counsel buttresses this argument with testimony that at approximately the same time another employee, Haskell, damaged a plant door with a forktruck and was not disciplined. Except for Brewer's protestations that the other employee using the door lowered it or the door was faulty and caused the accident, the facts are undisputed and disclose some similarities. Assuming the wearing of union buttons establishes the union activity of employees, both Brewer and Haskell were union employees. Brewer's forktruck was hand operated requiring some attention to operate, while Haskell's was a motor driven vehicle which required a greater degree of attention to operate. The motor vehicle forktruck has a greater damage potential to a plant door than a hand forktruck yet the greater damage was caused by Brewer. Although the record does not disclose the cost of Haskell's damage it does show that only two panels of glass were damaged whereas Brewer's damage was in excess of $160. Turner credibly testified that Brewer was attentive to several girls as he moved through the door and his fork carriage engaged and damaged the two lower sections of the partitioned door. (Brewer's testimony shows he does mix social proposals with work.) Brewer's explanation of the cause is only speculation and not based upon observable facts. Brewer's lack of knowledge from observable facts tends to support his history of negligence and inattentiveness. Fox's investigation of the accident showed that for Brewer to pass through the door without incident he needed to keep his attention on the door. The evidence evinces the contrary. He did not focus his attention on the door and damage was the result. Gray, who investigated Haskell's accident, found that the damage was slight and caused by the wind blowing the door as reported by Haskell. Wind is not illusionary but is subject to objective evaluation. Respondent's evidence showed that the 3-day suspension was generated by the nature of the accident and the cost involved to repair the door. The General Counsel has not established a contrary motivation for Respondent's suspension of Brewer. I therefore conclude and find that the 3-day suspension of Brewer on January 6 was not discriminatorily motivated.

Brewer's reassignment to the oven followed the separation of the prior oven employees and the handling of their duties by Turner for several weeks. Turner, who is the most senior employee in the department, credibly testified that the oven is not a bad job. Turner's son works the oven alone on the day shift. Several employees who work in the department testified that they have worked in the oven alone without incident. In fact, of all the employees who testified to the nature of the oven as a job task, Brewer was the only employee who experienced difficulty. Fox testified that the oven was assigned one and one-half employees normally because there are some functions that require two employees. Brewer's testimony that he was ordered to stay in the oven and not ask for help, I do not credit. Over and above his demeanor, which I found overbearing and arrogant at times, the substance of his testimony is contrary to the general theme of other witnesses and completely untenable when compared with his testimony and the record as a whole. Brewer found fault with any equipment he was required to use when no one else experienced difficulty. Brewer's characterizations of the oven equipment as faulty, unsafe, old, or homemade is not an honest evaluation. It is simply a convenience.[34] Much the same as his often repeated phrase, "a boring and miserable job." Brewer contests the alleged misunderstanding of Fox's instructions when he was assigned to the oven. I find his protest weak and unimpressive. Brewer admittedly did not

[34] The record shows that Respondent has an engineering department which is an integral part of the manufacturing process both in terms of products and plant design. Most, if not all, of Respondent's special tools or equipment used throughout the plant are "home made." One discriminatee who testified asked to be permanently transferred to the oven.

want to talk with Fox, for whatever his reason, however, when he broached the subject with Chuck Jones he was met with an immediate appraisal contrary to his prior understanding. So there would be no further misunderstanding, Jones summoned Fox and Turner. Jones' credible testimony included reinstructing Brewer on the proper use of the equipment since Jones had observed Brewer using the equipment improperly. Several days earlier Brewer had been admonished by Fox for telling Turner that he did not know what he was doing when Turner was instructing Brewer on the proper procedure to use the oven. Apparently improper procedure is the rule with Brewer, rather than the exception, and occurs in spite of instruction to the contrary. The record contains undisputed evidence that the oven is a safe atmosphere with more than satisfactory equipment. I think Brewer's understanding of Fox's work instructions and his related difficulties emanate not from Fox or the equipment in the oven but his approach to any assignment he is given. If his evaluation of the job task is that it is "boring and miserable" then more likely than not it will be. In my view it reasonably follows that proper procedure will not get the attention it should when one is bored or miserable on the job. Brewer's insistence on a new design hook as opposed to the established procedures for the old hook demonstrate his reluctance to do the job as instructed. Brewer's complaints of the oven equipment deserve no more consideration as probative evidence of the worth of the oven equipment than he gave the newly designed hook when Respondent honored his request. The General Counsel alleged the assignment to the oven as one to more onerous duties. I conclude that the General Counsel has not preponderated in the evidence and find that Brewer's assignment to the oven was no more or less than any job assignment in his department.[35] I further find that Respondent's assignment of Brewer to the oven was not discriminatorily motivated but rather was another attempt to find a job task at which Brewer might work efficiently.

Respondent contends that the subsequent accidents caused Brewer's discharge. The D-7 dropped in January and the L-1 in April. Brewer's discipline for the D-7 was a writeup apparently because it was repaired and used. The L-1, however, was damaged extensively in several places. Respondent's undisputed evidence shows the incomplete L-1 to be valued at about $9,000 and due to the extent of damage requiring additional cost to repair it, the determination was to scrap it.

The General Counsel argues that the L-1 could have been easily repaired but was not and that defective equipment was the actual cause of the accident. The two employees who physically attempted to repair one portion of the damage were much too terse in their testimony and simply not competent to testify. The General Counsel's witness had the armature repaired completely in 2 minutes based upon the fact that he had performed the same operation in the past and then sent the armature to the next operation. Respondent's witness testified that he actually attempted the repair but was unsuccessful. I cannot credit both, obviously, but even more is my concern for the probative value of either's testimony. It is evident to me that the testimony of each witness is based upon speculation and guess. Parker saw no other damage to the armature and has no responsibility or capability to test an armature electrically. Such a test must be applied whenever coils are reworked to assess the success of the rework. It is undisputed that coils may appear all right when viewed by eyesight but have no electrical integrity. Rapp was attempting a repair he had not performed before and he too had no responsibility or capability to test an armature electrically. Even if the only damage to the armature rested in the coils I would not find the testimony of Parker and Rapp to constitute substantive evidence. Tolbert's testimony adds nothing to the disputed damage to the L-1 armature dropped by Brewer. His testimony is completely diluted by conclusion and mere guess rendering the whole of no probative value. At best, Tolbert's identification of the armature he viewed rests on hearsay. Coppedge stated that only the coils were damaged but he did not inspect it thoroughly. He said, "we" repair armature coils all the time but he does not do the repair himself. He did not test the armature but he saw the forklift carry it to salvage the next day and minor damage does not go to salvage. Hardee's impression was that the L-1 dropped by Brewer was the worst damage he had seen and he was able to specify what he saw. Hampton simply testified that he had not dropped any armatures at all. I find the more substantial evidence in the record was offered by Respondent's lead inspector, the manager of quality control and the plant superintendent. Their testimony showed damage to the coils, the risers, and the commutator. I conclude that Respondent's determination of the damage and the cost figure assessed accurately reflect the result of Brewer's accident. The General Counsel offered additional evidence to establish that the commutator damage was repairable rather than irrepairable as contended by Respondent. Dorough's testimony is founded upon what another employee does when first working the commutator. Dorough's assertion, that the subject commutator could be cut an additional .0110 of an inch, which would easily eliminate the .0050 of an inch gouge caused by Brewer, will not withstand analysis. The first cut he refers to is not always .0062 of an inch or on average .0062 of an inch, but is a maximum of .0062 of an inch. Wherein the value of the cut on a given commutator lies is determined by its dimension as received from the supplier. Additionally, the machine error he alluded to would not necessarily be valued the same as the maximum depth of cut on the mica. The erroneous cut on the commutator bar would be something less than 46/1000 of an inch. Therefore, the total cut to be applied to a given damaged commutator would not be in excess of 100/1000 of an inch. His assertion, no matter how positive, is based upon his conjecture and not his personal knowledge of the operation he describes as turning the commutator. I neither credit Dorough's testimony nor

[35] The General Counsel's reliance on *Jack LaLanne Management Corp.*, 218 NLRB 900 (1975), is misplaced because in LaLanne the discriminatees were forced to absorb the duties of others in addition to their own duties. In the instant case that is not the situation. Brewer was simply reassigned to a task that many other employees have performed without incident.

do I consider it substantial evidence with probative value. The uncontroverted testimony of Respondent establishes the depth of the gouge as approximately one-half the workable thickness of the commutator. I therefore conclude that the L-1 armature dropped by Brewer was unrepairable due to the extent of damage and the cost involved and was scrapped as contended by Respondent.

The General Counsel's final contention is that cost, notwithstanding, armatures are dropped by other employees, sustaining damage, but the other employees are not disciplined. The record simply will not support that contention. The evidence shows that before and after Brewer's fatal drop all employees who damaged armatures (and other company property) are disciplined. Albeit the discipline in all other cases was a writeup (like Brewer received for the D-7) there is no suggestion that any employee has damaged an L-1 to the same extent as Brewer. A factor that must be considered in making a judgment is the stage of production attained by the damaged piece. Brewer's armature was almost complete which accounts for the high cost involved. The only reference in the record to other damaged L-1's was before any windings are affixed and only involved damaged to the risers. In addition, both were repaired with a minimum of effort and cost.[36]

Based upon the above I conclude that the General Counsel has failed to sustain his burden of proving discrimination and find that Brewer was discharged for reasons unrelated to his union activity.

2. More Discrimination—James Dorough

Dorough has worked in the electric building for several years under Foreman Whitwell and leadman Richie. In addition to performing multifunctions he also works in two departments. Dorough has heat treated armatures since about August 1977 and began operating the automatic undercutter when it was installed in October or November 1977. Usually the automatic undercutter is only a couple hours work then he returns to assembly of generators or heat running armatures. Dorough and two other employees do all the work in Department 883G and usually by priority. The part that is needed most gets worked on by all employees. When he is heat treating armatures he is in Department 883G, but when he operates the automatic undercutter he is working in Department 885. Dorough's checks come from 883G regardless of what jobs he has performed during the period. During January and February both departments were working daily overtime; however, Dorough did not. He only worked his regular shift of 7 a.m. to 3:30 p.m. Frequently during this period of January and February, Dorough handbilled employees between shifts starting at 3:30 p.m. and passed out union authorization cards. Dorough testified that he offered a union card to every employee in the electric building. At this same time Dorough began wearing union insignia on his work clothes and on a teamster vest which he wore every day. In addition, Dorough was active in the plant posting union literature in the snack area for the electric building. (See sec. III,C,2.) Dorough testified that when he began his union activity both Whitwell and Gray started watching him and keeping him in his department. There were several times that he was told by Whitwell and Gray to stop talking to other employees who are working. Even when he left the department for cigarettes or candy he was told to go straight to the machine and don't talk to anyone. In one instance Gray accompanied him for cigarettes.

Besides the daily overtime there is also occasional Saturday overtime. The foreman or leadman of each department tells the employees there is overtime for Saturday if they want it. If an employee wants to work he accepts it, if not then he rejects it. Dorough was not asked by his supervisor or leadman to work any Saturdays for 11 or 12 weeks beginning on February 24, although he was willing and able to work on Saturdays. Dorough stated that he requested, of Richie, to be given overtime but Richie said he could not grant it. Dorough did begin to get Saturday overtime and some daily overtime about mid-May.

Dorough was absent on May 16 and 17. Each day Dorough had his wife call in to report the absence. Dorough testified that the company policy of reporting in was lax and employees always called in when they could. In his case he did not have a phone where he lived but he did not have a phone number listed with the Company for them to call. Dorough did not think the Company knew he did not have a phone. Dorough stated that he always had his wife call in through habit. Although he considered it a bad habit to have someone else call he stated that he was never told to call in during the morning. Dorough reported for work Thursday, May 18, and Whitwell accompanied him to personnel. He, Whitwell, and Stahl discussed the absences and reporting of the absences and then Stahl told Dorough he was suspended for 3 days for failure to promptly call in. Stahl reminded him that he had been told before to call in promptly and then told him to report for work the following Tuesday. Dorough returned on Tuesday and resumed heat running armatures. After several days he finished the armatures and started to go to the automatic undercutter but Richie told him he would not be on the automatic machine any longer. Loftis, whom Dorough had trained in March, was permanently assigned to operate the automatic undercutter. Since Dorough trained Loftis, he and Dorough alternated operating the automatic machine. Now Dorough was assigned to building generators and undercutting A-19 armatures by hand. Dorough testified that the automatic undercutter job is probably the cleanest job in the plant contrasted with building generators and undercutting armatures by hand which is a dirty, filthy job.

Dorough stated that in his 6 years he saw very few employees disciplined. He did recall that he had been previously disciplined by Whitwell for leaving his work area; being absent and not calling in; quitting too early to wash up; coming back late from lunch; and, for not wearing his safety glasses. Prior to getting the automatic undercutter all armatures were undercut by hand. With

[36] The evidence showed the guilty employee to be a union supporter just as Brewer.

the exception of the A-19 armature, all armatures can be undercut on the automatic machine. Dorough or one of the other employees in 883G undercut the A-19 armatures by hand. One of the other employees also heat runs armatures when Dorough is busy with another job. Dorough frequently answers the phone in 883G when employees call in to report an absence and the employees usually ask that their supervisor be told they called. Most calls are taken in the morning but he has received several afternoon calls.

Employee Chester Jones testified that Dorough did not work any overtime when he ran the automatic undercutter. Jones himself did work the daily and Saturday overtime whenever his foreman or leadman told him overtime was needed and he saw several employees wearing Teamsters buttons working the overtime. The daily overtime was usually communicated to employees before end of shift the day before. The Saturday overtime was communicated on Friday when paychecks were distributed. Jones stated that both the daily and Saturday overtime was voluntary. Jones has worked with Dorough since the new electric building was built in 1977 and since that time Dorough has done generator work, heat running of armatures, assembly and the automatic undercutter. There is not enough production to keep any one employee busy on only one job. All employees do all the jobs. Other employees besides Dorough and Loftis had operated the automatic undercutter at times when Dorough or Loftis were busy with something else.

Whitwell testified that he never told Dorough that he could not work overtime on Saturdays. Whitwell knew the daily overtime was voluntary but when he discovered Dorough was not working any daily overtime he disqualified Dorough from getting Saturday overtime. Whitwell estimates that he disqualified Dorough for Saturday overtime from 3 to 8 weeks. Dorough's suspension in May was due to unauthorized absences according to Whitwell. He considered that the call-ins were too late therefore the absences were unauthorized. Although there is no set time to call in very few employees fail to call in at the start of the shift. Dorough's call-ins were at 2:30 p.m. and that's too late to help plan the shift. Shortly after Dorough's suspension Whitwell took him off the automatic undercutter because he could not depend on Dorough to work regularly or stay at his work station when he was working. Loftis, whom Dorough trained, was assigned the automatic undercutter permanently. Whitwell stated that the automatic undercutter is not a high skilled job and requires little time to learn. Loftis became proficient in about a week.

Whitwell was aware of Dorough's union activity from early January as a result of Dorough's handbilling, posting, and wearing the Teamsters vest. He denied he kept Dorough confined to the electric building but he did admonish Dorough for talking too much to employees not in his department. Whitwell stated that other supervisors had complained of Dorough's wasting of their employees' worktime.

Foreman Gray testified that Dorough's wife called in to report two absences on May 9 and 10. He received both calls at 2:30 p.m. on each day. Mrs. Dorough told Gray that James was looking for an apartment, had to pay a traffic ticket and had some bills to pay. Gray went on vacation May 11 and did not know of Dorough's suspension. Gray stated that other employees in his department who were absent always called in earlier to report. He did not know of any employee absent and not calling in who was not disciplined. Gray also testified that he wrote up Dorough and talked to him on February 9 about being absent and not calling in. He did not, however, set a time for Dorough to call in.

Leadman Richie testified that Dorough asked him several times about working overtime. Richie told Dorough that only Gray or Whitwell could authorize overtime.

Pierce testified that he has been absent on several occasions for personal reasons but he always called in by 10 a.m. and no later than 11 a.m. Several times he got permission in advance when he knew he needed to be off. Pierce knows that Carver has also been absent and called in late and the foreman talked to him about calling in promptly to report.

Analysis and Conclusions

The record evidence relating to the alleged discrimination against Dorough is not totally in dispute. The facts surrounding each allegation are substantially uncontroverted. The real issue centers on Respondent's motivation in each instance.

The General Counsel contends that Respondent denied overtime to Dorough during a period of time when Dorough was active for the Union and that was Respondent's sole reason; that Dorough's suspension also was based upon his union activity, not the application of Respondent's rules; and that Dorough was reassigned from the automatic undercutter to a more menial and less secure position because he was engaging in union activity. The General Counsel supports each allegation with evidence that Dorough was a target for restraint to nullify his organizational activities.

Respondent counters that its actions were governed by its rules of conduct known to its employees and were in each case management prerogatives. Although admitting Dorough's union activity Respondent professes it had nothing to do with its determinations with respect to Dorough.

It is undisputed that the overtime policy of Respondent, whether daily or Saturday, is voluntary. Only in the case of an emergency or a pressing need to satisfy a customer's demands is overtime required of employees. The record is void of any emergency or pressing need in Dorough's department so the voluntary rule is applicable. Dorough admittedly asked for overtime but did not receive it.[37] Richie told Dorough that only Gray or Whitwell could grant an employee overtime. Whitwell's testimony clearly shows that he did not want Dorough working Saturday overtime and prevented him from doing so. Whitwell's conduct constitutes denial of over-

[37] The evidence offered and rejected concerning Dorough's ride to work, the identity of the driver and her social involvement with Dorough, is not relevant to Dorough's right to work overtime. The record is void of evidence that an employee's place of residence, means of transport, or social life is considered when offering overtime, especially in Dorough's case.

time to Dorough. Although Whitwell based his denial to Dorough on the fact that Dorough did not work overtime during the week he did not explain the resultant contradictions of the company policy. Whitwell knew that Dorough was handbilling between shifts at 3:30 p.m. and before shift at 7 a.m., when other employees were accepting the voluntary overtime. It is clear that Whitwell modified the company policy as it applied to Dorough. The record shows that other employees who displayed union insignia were not denied overtime by Whitwell, so the reason for denial to Dorough must be personal to Dorough. In the absence of evidence to establish the nature of this personal reason, I can only infer that the reason applied to Dorough was his election to work for the Union rather than work overtime for Whitwell. I conclude that Whitwell's denial of Saturday overtime to Dorough was contrary to the Company's stated policy and motivated by impermissible reasons directly related to Dorough's union activity. I therefore find that Respondent violated the Act by denying overtime to Dorough during February, March, April, and May.

The General Counsel claims that the suspension of Dorough was motivated by Dorough's union activity not the rule on absences. The General Counsel relies on evidence in the record to support a conclusion that Respondent disciplined some employees and did not discipline others making Respondent's enforcement of discipline against Dorough suspect. Counsel specifically refers to the cases of Howard Young and Richard Wade and the testimony of Haskell. Young was not guilty of failure to call in promptly which accounts for any lack of discipline relative to his reporting absences. Haskell's testimony was too general to be capable of assessment and therefore of no probative value. In addition Gray credibly testified that few employees fail to call in promptly to report absences. Gray's testimony finds support in Dorough's personal account of other employees reporting absences when he answers the phone. The General Counsel's reliance upon Wade's absences is not support because Wade was disciplined as Dorough had been prior to the suspension. Dorough's own statement of his understanding of the rule personifies the promptness with which he would act. He personally never called but directed his wife to do it when she could get around to it. Dorough's intent then is clear; to report absences at his convenience without regard for the rules. Dorough's reliance upon his impression that enforcement of the rule was lax is not supported by the record. Assuming such laxity was supported in the record I would still hold an employee to a higher degree of responsibility to his job than that shown by Dorough whether he supported the union or not. One hour before shift ends does not satisfy the most general interpretation of purpose. I conclude that Dorough's conduct warranted suspension and Respondent's discipline was not motivated by union activity on the part of Dorough. I find support for this conclusion in the fact that Dorough knew it would be difficult for him to report absences under any reporting rule because he did not have a telephone, yet he kept his phoneless condition to himself. His silence prevailed in the face of prior discipline for the identical infraction. Accordingly, I find that Respondent did not violate the Act by suspending Dorough on May 11 for failure to promptly report his absences.

The General Counsel's remaining allegation deals with Dorough's reassignment from the automatic undercutter. At the outset I note that Dorough had no assignment to the automatic undercutter (certainly not exclusive of other employees) but rather was the first employee trained on the machine. The record is abundantly clear from Dorough's testimony as well as all others, that several employees performed the job of undercutting on the automatic machine from its inception to the present. Dorough himself testified that, after he trained Loftis, they would alternate the undercutting. The undisputed facts that Dorough was assigned to Department 883G and that the automatic machine was in Department 855 further supports the lack of an exclusive assignment to Dorough. Nonetheless, the General Counsel claims that Dorough was relieved of the automatic undercutter and assigned a more menial and less secure position. The job tasks that Dorough performed after being relieved of the automatic undercutter were the identical job tasks he performed before and during his tenure on the automatic undercutter. Also no one job task in Department 883G or 885 requires an employee's performance for the entire day. Especially the automatic undercutter which is operated on an average of two hours. Dorough's reference to the dirty job of undercutting the A-19 armatures by hand is only supportive of Dorough's desires not the more onerous nature of undercutting by hand. He and the other employees have always undercut the A-19 armatures by hand because they cannot be cut on the automatic machine. I cannot, and do not, conclude that Dorough's work assignments after being removed from the automatic machine are more menial or in some way less secure of his employment position. It does not appear to me that Dorough's employment position has changed at all. He simply has one less job task to perform. However, Whitwell's motivation in removing Dorough is attacked by the General Counsel as retaliation for Dorough's union activity. The record shows that the work for the automatic machine is not a daily requirement nor does it accrue at any given time. The need for constant coverage by an employee, or employees, qualified to operate the machine is abundantly present in the record. Dorough has exhibited a proclivity to be absent without informing supervision. Such a circumstance creates production scheduling problems in any plant. Whitwell's stated reason for removing Dorough was the undependability and unreliability of Dorough to be on the job. Dorough's absence from the job was not related to his union activity. Dorough's testimony evinces that each absence was for personal family reasons. I find Whitwell's testimony to be credible with ample support in the record. Dorough is not privileged to act in any way he chooses and be insulated from reaction by his supervision because he engages in union activity. I conclude that the General Counsel has failed to show that Whitwell acted discriminatorily in removing Dorough

from the automatic undercutter machine. I find therefore that Respondent has not violated the Act.[38]

The General Counsel argued that Respondent's use of the EIR's to detail adverse information it had on the discriminatees was a built-in preventative maintenance program against union activity. By keeping a dossier of adverse material on employees, Respondent could always have ready documentation to justify an adverse action against an employee, especially where such employee was involved in union activity. The General Counsel's argument seems to be grounded upon his assumption that the EIR's were surreptitiously maintained. The record shows the contrary. It is true that Respondent's rule did not require the supervisor to show the EIR to the affected employee. The procedure followed by each supervisor depended upon his personal approach to discipline. Some discriminatees were shown EIR's by their foreman and at least made aware that they were being written up. Such disclosure of the material is clear from the testimony of those discriminatees that recalled the specific incidents related in the EIR's. Albeit, the better practice may be full disclosure and acknowledgement by the employee at the time of the event, there is nothing in the Act making such a practice mandatory. Neither does the Act proscribe the codification of employees' infractions by the employer. Therefore, I reject the General Counsel's argument for an inference based upon Respondent's method of maintaining the employee information records.

ADDITIONAL CONCLUSIONS OF LAW

1. Respondent, by coercively interrogating Wagnon concerning his union sympathies, through Foreman Bolton, has engaged in an unfair labor practice in violation of Section 8(a)(1) of the Act.

2. Respondent, by restraining the wearing of union buttons, by Wade, through its Foreman Alford, has engaged in an unfair labor practice in violation of Section 8(a)(1) of the Act.

3. Respondent, by maintaining and enforcing its rule #13 which prohibits employees from engaging in oral solicitations in work areas, has interfered with, restrained, and coerced its employees in the exercise of their Section 7 rights in violation of Section 8(a)(1) of the Act.

4. Respondent, by maintaining and enforcing its rule #14 which prohibits distribution or posting of literature in nonworking areas, has interfered with, restrained, and coerced its employees in the exercise of their Section 7 rights in violation of Section 8(a)(1) of the Act.

5. Respondent, by disciplining its employee Wagnon under rule #13 for engaging in oral solicitations in work areas, has interfered with, restrained, and coerced its employees in the exercise of their Section 7 rights in violation of Section 8(a)(1) of the Act.

6. Respondent, by enforcing its rule #14 against distribution or posting of union literature in a nonwork area, through Foreman Impson, has interfered with, restrained, and coerced its employees in the exercise of Section 7 rights in violation of Section 8(a)(1) of the Act.

7. Respondent, through Foreman Whitwell, threatened employee Loftis with discharge in violation of Section 8(a)(1) of the Act.

8. Respondent, by the discharges of Howard Young on January 23, Ulysses Wagnon, Roger Doss, Richard East, and Richard Wade on February 10 has engaged in discrimination in regard to tenure of employment or other terms or conditions of employment thereby discouraging membership in or activities on behalf of a labor organization in violation of Section 8(a)(1) and (3) of the Act.

9. Respondent, by denying Saturday overtime to Dorough during the months of February, March, April, and May, has engaged in discrimination in regard to terms and conditions of employment thereby discouraging membership in or activities on behalf of a labor organization in violation of Section 8(a)(1) and (3) of the Act.

10. The General Counsel has failed to prove by a preponderance of the evidence the allegations in the complaint alleging additional interrogations, restraints, threats, surveillance, and discharges.

11. The aforesaid violations found constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I find it necessary to order Respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Respondent having discriminatorily discharged Howard Young, Ulysses Wagnon, Roger Doss, Richard East, and Richard Wade, I find it necessary to order it to offer them full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, with backpay computed on a quarterly basis and interest thereon to be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977),[39] from January 23 and February 10, the respective dates of discharge to the date of proper offer of reinstatement.

Further, Respondent having discriminatorily denied Saturday overtime to its employee, James Dorough, I find it necessary to order it to pay backpay computed in the same manner as set forth above, for each Saturday worked by the employees of Department 883G or 885 from February 24 until a date in May when Dorough was offered Saturday overtime work.

Upon the foregoing findings of fact and conclusions of law, upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

[38] The "oven" evidence proffered by the General Counsel and argued to show further relegation of Dorough to menial tasks is not in support of any allegation of an unfair labor practice. However, if it were considered it would have to be in conjunction with prior testimony of the "oven" functions and Dorough's own testimony that he asked to be permanently transferred to the oven. All of which is contrary to a finding of a more onerous job assignment.

[39] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

ORDER[40]

The Respondent, Marathon LeTourneau Company, Longview Division, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating employees concerning their union membership, activities, or sympathies.

(b) Restraining employees in the use and wearing of union insignia.

(c) Maintaining, giving effect to, or enforcing its no-solicitation rule #13, which forbids employees from engaging in union solicitation in work areas during nonworktimes.

(d) Maintaining, giving effect to, or enforcing its no-distribution rule #14, which forbids employees from distributing or posting literature in nonworking areas of the plant.

(e) Threatening employees with discharge for engaging in union activities.

(f) Discharging, laying off, or otherwise discriminating against employees in order to discourage membership in or activities on behalf of Local Union 745, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America or any other labor organization.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Rescind the no-solicitation rule #13 of its rules and regulations to the extent that such rule prohibits union solicitations by employees in work areas during nonworktime.

(b) Rescind the no-distribution rule #14 of its rules and regulations to the extent that such rule prohibits distribution or posting of literature in nonworking areas of the plant.

(c) Rescind and expunge from the record of Ulysses Wagnon the Employee Information Record relating to discipline for violation of Respondent's no-solicitation rule #13 issued on February 1.

(d) Offer to Howard Young, Ulysses Wagnon, Roger Doss, Richard East, and Richard Wade, if it has not already done so, immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings or benefits they may have suffered by reason of Respondent's discrimination against them as set forth in the Remedy section of this decision.

(e) Make whole James Dorough for any losses of earnings or benefits he may have suffered by reason of Respondent's discrimination against him as set forth in the Remedy section of this Decision.

(f) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to facilitate the effectuation of the Order herein.

(g) Post at its plant in Longview, Texas, copies of the attached notice marked "Appendix."[41] Copies of the notice, on forms provided by the Regional Director for Region 16, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(h) Notify the Regional Director, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS ALSO ORDERED that the complaint be dismissed insofar as it alleges violations of the Act not specifically found.

[40] In the event no exceptions are filed as provided by Sec. 102.46 of Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[41] In the event that this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."